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

3619

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T H E P E O P L E

-against-

ABRAHAM AXLER,
SIMON AXLER
-and-
ISIDOR ROSENBERG.

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:
: B e f o r e :
:
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: HON. ALFRED J. TALLEY, J.,

: and a Jury.
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New York, December 12th, 1921.

Indicted for burglary in the third degree.

Indictment filed November 18th, 1921.

A P P E A R A N C E S :

ASSISTANT DISTRICT ATTORNEY JAMES E. DONOHUE:

FOR THE PEOPLE.

K. HENRY ROSENBERG, ESQ., FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY:

I S I D O R, F R I E D M A N, of 166 West 27th Street, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Mr. Friedman, what is your business? A Furrier.

Q And were you engaged in the fur business on the 24th of October of this year? A Yes, sir.

Q And with whom? A Myself.

Q What is the name of the business? A Schelnuck, Friedman & Applebaum.

Q And what is your connection with that firm, what do you do?

A I am the boss, I am one of the bosses myself.

Q And what floor is your place of business on? A On the top floor.

Q And where is the address? A 37th Street, 166.

Q And you occupy the whole floor? A Yes, the whole floor.

Q Now, do you remember October 24th, 1921? A Yes. I closed up October 22nd.

Q One moment. I did not ask you that. Do you remember that date? A I remember it, yes.

Q And what time did you leave your place of business that day? A At four o'clock I closed up the place, because it was a holiday.

Q Now, please just answer my questions. You closed up the

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place at four o'clock? A Yes, sir.

Q How did you close it? A I got the lock on the door, and downstairs there is two locks, and I closed up on October 21st, because it is a holiday.

Q Now, I didn't ask you about that.

BY THE COURT:

Q Now, was it around a holiday? A I am not working the holiday.

Q Tell the District Attorney all about the holiday. I want you to get that off your mind.

THE COURT: He evidently is determined that we shall hear about the holiday.

A I closed up October 22nd and on the 21st I am not working, it is a holiday, and I got around on October 23rd, about eight o'clock in the morning, and the door is broken and the lock is broken, and there is a different lock on the door, from the police station house.

BY MR. DONOHUE:

Q Now, when you left there, the afternoon before the holiday, just what did you do? Did you lock up the place? A No, no.

Q The afternoon before the holiday, I am speaking of now. You say you closed the place? A Yes, I closed the place October 22nd, about four o'clock.

Q And did you lock the door? A Yes.

Q What door? A Upstairs, and I put a lock on the door

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place at four o'clock? A Yes, sir.

Q How did you close it? A I got the lock on the door, and downstairs there is two locks, and I closed up on October 21st, because it is a holiday.

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BY MR. DONOHUE:

Q Now, when you left there, the afternoon before the holiday, just what did you do? Did you lock up the place? A No, no.

Q The afternoon before the holiday, I am speaking of now. You say you closed the place? A Yes, I closed the place October 22nd, about four o'clock.

Q And did you lock the door? A Yes.

Q What door? A Upstairs, and I put a lock on the door

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downstairs.

Q You placed a lock on the door? A Yes.

Q Where did it lead to, that door? A I can't understand you.

BY THE COURT:

Q What door did you put the lock on? The door of your place of business? A Sure.

Q The door that you enter from the street? A No.

Q What door was it? The front door or the back door? A No, the front door.

BY MR. DONOHUE:

Q Now, what time did you leave, did you say, on the 23rd?

A On the 23rd, about four o'clock.

Q Now, what was in your loft when you left, if you remember? What was in your place of business when you left there? Were there any furs or anything of the kind? A Sure I've got furs, and I've got coats, and neck pieces, and skins, I've got in the shop.

Q Now, when you returned on the 24th you found a different lock on the door? A Yes, sir.

Q That was not the same lock you had put on on the 23rd?

A No, it is a lock from the station house.

Q Did you go into your loft on the 24th? A Yes, sir.

Q And did you miss anything? A No, I've got nothing in the shop.

Q What was missing? A I haven't got any more any nice

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pieces of fur.

THE COURT: No. Listen, witness:

BY THE COURT:

Q When you came back to your place of business, after the holiday, did you miss anything? A Yes, the door was broke, and there was another lock on the door, a police lock.

Q Very well. Now, when you got into your loft what did you miss? A I got nothing; everything is stole.

BY MR. DONOHUE:

Q Did you have any coats that were stolen? A Yes.

Q How many coats, how many coats were missing? A I got seven coats.

THE COURT: No. Let us suspend this examination. Let us get an interpreter. We are simply wasting a great deal of time, because evidently this witness does not understand the questions.

(The witness then testified through the Official Interpreter, Mr. Landau.)

BY MR. DONOHUE:

Q Now, when you came back on the 24th, you say you found a different lock on the door? A Yes, a different lock.

Q Now, what was missing when you arrived on the 24th?
A Goods to the amount of \$5,000.

BY MR. ROSENBERG: If your Honor please, I have no objection to the goods being missing, but I object to the statement of the alleged value of the goods.

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THE COURT: Yes, objection sustained. Strike it out
and the jury will disregard it.

BY MR. DONOHUE:

Q What did you miss? A Four lamb coats.

Q What were they worth? A About \$500 apiece.

Q And what other goods were missing? A Three muskrat
coats.

Q And what were they worth? A About \$800, the three of them.

Q What were they valued at, each of them? A About \$300
apiece.

Q And what else was missing? A I had eight finished coats.
All three were missing and they are worth about \$500 and \$600,
the three of them.

Q That is, about \$200 apiece? A Yes, sir.

Q Now, did you have any pieces of fur in there on the 22nd,
that were missing on the 24th? A Skins.

Q How many pieces? A About 70 or 80 skins.

Q Do you mean by that pieces of skin? A No, skins; whole
skins.

Q How many did you say? A I don't know exactly, whether it
was 60 or 70 or 80.

Q What was the value of each of those skins? A About five
or six dollars a skin.

Q I see. Now, when you arrived there on the morning of the
24th, was the lock broken that you had put on there before, on the
22nd? A The lock, with a key that fitted into it, I found in the

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toilet, on the side.

Q Now, what kind of locks did you put on that door? A I've got the keys here.

Q I am not asking you that. But what kind of a lock was it? A I don't know. It was just like any other lock, to which this key fitted. I can't explain.

Q Well, was it a Yale lock or a bolt? A I can't explain; it is a long lock.

Q Well, was it a padlock? A It was a round lock.

Q On which side of the door was it? On the outside of the door? A Yes.

MR. ROSENBERG: Your Honor, I may make a suggestion that will save time. The defendants do not intend to dispute the burglary.

THE COURT: It does not make any difference. The District Attorney must prove the burglary before I can submit the case to the jury. Let him go ahead and prove the fact that a burglary was committed. That is necessary before he seeks to connect the defendants with any burglary at that place.

MR. ROSENBERG: Very well, sir.

BY MR. DONOHUE:

Q That lock was on the outside of the door, was it not?

A Yes; and it was pried off with a piece of iron.

Q And the other lock was taken off entirely? A Yes, sir.

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The next morning I got the key from the station house and I went into the toilet and found the key of that lock.

Q Where did you get the key from the police? A In the 30th Street station.

Q Is this the officer, Officer Henry S. Hoffman (indicating)?
A Yes.

Q And with the key that he gave you, you opened your door?
A Yes, with the help of the key that I got in the station house I opened the door.

Q And when you went into your place were any of your goods missing? A Yes.

Q And these pieces of fur that you have spoken of as missing, were they hanging up in your place or in boxes when you left?

A Part of the pieces were in bags, and some of them were hanging up.

Q Now, look at the defendants and tell me whether you ever saw them, or either of them, at any time prior to the 24th of October? A No, sir.

Q Were they in your employ? A No, sir.

Q Did they have a right to be in your loft at any time?

MR. ROSENBERG: If they ever were.

MR. DONOHUE: I haven't said that they were there at all.

A No, sir.

Q When did you first see them? A I see them in the court.

Q How many stories in that building? A Three stories.

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Q Who occupies the first floor? A The first floor is occupied by a barber, and a cleaning store.

Q And what is the second floor occupied as? A On the second floor there is a furrier, and a place where they ~~skimp~~ pleat skirts

Q And is that occupied by one firms? A No.

Q How many firms are there on the third floor? A Two.

Q How many firms are there on the second floor? A Also two.

Q And what business are they in? A Furrier and a plaiting place.

Q Now, you are on the third floor, are you? A Yes.

Q And you occupy the whole floor? A Also on my floor there is another furrier and myself.

Q There is a fourth floor, is there; there is a fifth floor? A No, sir.

Q You are on the top floor? A Yes.

CROSS EXAMINATION BY MR. ROSENBERG:

Q When you told the Judge you had locked the door when you left at four o'clock, did you mean the upstairs or downstairs door? A I closed my door, and I also closed the downataairs door, and the next morning I wasn't there.

Q Do you mean to say you closed the door downstairs, which was the entrance to the building, thereby closing up the whole building, at nine o'clock, or eight o'clock, whichever it was?

A Whenever I left, there was no one in the building. It was on a Sunday.

Q Well, was October 22nd a Sunday? A Yes. Look it up and

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you will see.

Q And what holiday was on Monday? A The second day of the Jewish holiday.

THE COURT: October 22nd was on Saturday, counsel.

BY MR. ROSENBERG:

Q Now, it appears that the 22nd of September was on a Saturday. A No, that date was a Sunday that I was talking of. Maybe I am making a mistake, because I can't explain it very well.

Q Didn't you tell the Judge in the other court, on the 25th of October, that you closed it up and locked it up on the 21st? A I didn't understand English well, but now I understand English very well.

Q Well, I think, as a matter of fact, you told the Judge that you locked up your place on the 23rd. A I don't -- I didn't understand then. I know I closed my place on Sunday afternoon at four o'clock.

Q Have you got an inventory of your stock? A No, I never had such a thing.

Q Well, at any rate, the goods that you claim were stolen were returned to you by the police, isn't that right? A With the exception of three coats that was missing.

Q Well, the police had those, haven't they? A No.

Q You say that three coats are missing? A Yes, sir.

Q And with the exception of the three coats, everything that you claim was stolen you have got back? A Yes.

Q And what kind of coats are the three that you say are still

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missing? A Coney.

Q Well, you haven't told the jury anything about coney yet. A I didn't know then, but when I got up before the Grand Jury and I got my goods back, then I found out what was missing.

Q But didn't the District Attorney ask you what you missed in your store, and you told the District Attorney exactly what goods were missing, didn't you? A Yes.

Q Well now, those were coney coats? A The coats that were missing?

Q Yes. They were coney coats? A Yes.

Q Are they also called raccoon skins? A Yes, raccoon.

H E N R Y L. H O F F M A N, Main Office Division, a witness on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Officer, what particular Bureau are you attached to?

A Safe and Loft Division.

Q And were you attached to that Division on October 24th?

A Yes, sir.

Q Were you out that morning? A I was.

Q And who was with you at that time? A I was alone.

Q Now, did you ever see these three defendants before this morning? A Yes.

Q When did you first see them? A October 24th, 3 P. M.

Q Now, where were they at that time? A Standing at 27th

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Street and Broadway, with two others.

Q Four of them altogether? A Yes, sir.

Q And were they in anything at the time, any conveyance?

A No, sir.

Q Well, what did you see them do after that? A When I seen the four of them standing there --

Q Pardon me a moment, officer. Were you in uniform or citizen's clothes? A In citizen's clothes.

Q What did you do? A I kept them under observation and they walked west on 27th Street, and Simon Axler, he and another defendant that was arrested with him, by the name of Rosenberg, after the four of them had a conversation, they crossed over and went into the building 166 West 27th Street.

Q Who went in, officer? A Simon Axler and Rosenberg.

Q They went into the building? A Yes.

Q And you stood outside? A Yes.

Q What happened to the other two men at that time?

THE COURT: Now, let us get this clearly before the jury.

BY THE COURT:

Q When you are talking about Rosenberg, you are talking about another man than these defendants, not about either of the defendants? A No, sir; about a man connected with this case, Rosenberg.

BY MR. DONOHUE:

Q And who were the other two men? A Abe Axler and Morris Fershing.

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Q And when the two came out of the building, what did they do? A They continued west on 27th Street, and were followed by Abe Axler and Ferthing, and they went down to a restaurant on Eighth Avenue, between 25th and 26th Street, and they were in there a few minutes and then came out. They returned to 27th Street and Seventh Avenue, and then Simon Axler and Rosenberg stood on the corner, and Abe Axler and Ferthing went into the building at 166 West 27th Street, and then came out and crossed the street, and the four of them had a conversation and continued north on Seventh Avenue to 30th Street, and then went over to 103 Madison Avenue. They all went in there but one, and Abe Axler went into a telephone booth and borrowed a coin or something from Simon Axler, who was outside, and went into the building again. And then they went through the park and went to 23rd Street and Fifth Avenue.

Q And did you have a talk over the telephone with anyone at that time? A Yes, I called up Lieutenant Stapleton, of the Squad, and talked with him, and then my partners, Detectives Moriarty, Schauss and Foray came up.

Q Meanwhile where were the defendants? A Standing at the corner of 23rd Street and Fifth Avenue.

Q How long did they stay there? A About half an hour.

Q And did you keep them under observation after those other detectives came along? A Yes. And then this defendant, Simon Axler, crossed over 23rd Street and Fifth Avenue, on the west side, and after speaking to the chauffeur, Blume, who was a chauffeur of

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a Packard car, he got into the car.

Q Where was the car at the time? A At the southwest corner of 23rd Street and Fifth Avenue. And the car continued east on 23rd Street, and it stopped between Fourth Avenue and Broadway, and then the other two defendants -- Abe Axler, Rosenberg and Morris Fershing -- the four were in the car, and continued east on 23rd Street to Third Avenue, and turned north on Third Avenue, and then I lost track of them. And then I went back to cover the building in West 27th Street.

Q Who was with you? A My brother officers, officers Moriarty, Schauss and Foray.

Q And when did you get back to the building? A About six o'clock. And, after being there a short time, the defendant Simon Axler and Abe Axler came down and looked up at the building, and walked up the street and I seen them connect with Blume and Fershing, and then they walked back and after a short conversation there, the four of them came walking down the street towards the building. Abe Axler went into the building first, and then Simon went in, followed by Fershing and Rosenberg. They were in there a few minutes when the four of them came out. And so then I went up into the building and I got on the fire escape of a concern named Fried & Engel. So I remained on the fire escape with Detective Foray.

BY THE COURT:

Q One moment. I don't understand your reference to 23rd and

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Seventh Avenue. A No, sir. 23rd Street and Fifth Avenue.

That's where they met the chauffeur.

Q And what do you say about Fried & Engel? A They have a place at 27th Street and 7th Avenue, and I went up there to secrete myself, so that the defendants wouldn't see me.

BY MR. DONOHUE:

Q Go ahead, officer. A So, after being up there a few minutes, the two Axlers came down and they went in the building.

BY THE COURT:

Q How did they get into the building? A They walked into the front door.

Q And you saw them enter the front door from the street?

A Yes, sir.

Q Where were you at that time? A On the fire escape.

Q Of what building? A On the northwest corner of 27th Street and 7th Avenue.

BY MR. DONOHUE:

Q And how near the corner was the building you saw these men enter? A I should judge about 100 feet.

BY MR. ROSENBERG:

Q 100 feet? A Yes, sir; about.

BY MR. DONOHUE:

Q From the corner of 7th Avenue or from where you were?

A Well, I was across the street, and I was right opposite the building that they entered.

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BY THE COURT:

Q You saw them enter the building? A Yes, sir. And so, ^{light} after being there a few seconds, I seen the ~~hat~~/go up on the fourth floor, and I seen the form of the two defendants in the hall.

MR. ROSENBERG: I object to that, "the form of the two defendants".

BY THE COURT:

Q Could you recognize them from where you were? A Yes, sir; not their faces, but I could recognize their form.

THE COURT: Go on.

A (Continuing) And I seen them motion over towards that side of the wall, the east side of the building (illustrating). And so, after they were in there about 15 or 20 minutes, two of them came out and walked to the corner of 27th and 7th Avenue. Then the automobile pulled down to 158 West 27th Street, and then Rosenberg and Fershing walked over, and after a short conversation with the two defendants, the automobile drove around on Seventh Avenue and north on Seventh Avenue, and stood at the corner of 28th Street; and, after the two defendants here and Rosenberg and Fershing had a conversation, then the two defendants here walked up and spoke to the chauffeur, and Rosenberg and Fershing returned into the building; and then the chauffeur went east on 28th Street, and came around by Fifth Avenue, - I think so, at least, - to 27th Street, and pulls up in front of the building,

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when Fershing comes out and places it in the automobile, and then Rosenberg comes out, with a bundle and puts it in the machine, and we jumped then on the running, as it was starting, and I said--

Q No; don't tell us what you said. Now, officer, you say that you saw them come out with bags? A Yes, sir.

Q Which particular defendants had the bags? A Rosenberg and Fershing. And I said to officer --

Q No, you must not tell that. And at that time where were these two defendants? A Down between 27th and 28th Streets, on 7th Avenue.

Q Were they both together? A Yes.

Q When Fershing and Rosenberg came down with the bags, what did they do? A Put them in the automobile, and drove by Blume.

Q And these were the same men that you had been watching for an hour or two before? A Yes, sir.

Q And the building you are talking about is 166 West 27th Street? A Yes, sir.

Q And the building out of which these two bags were brought? A Yes, sir.

Q Then did you jump on the running board of the automobile? A Yes, just as it was starting up.

Q And who was in it? A Rosenberg and Fershing.

Q And who was driving it? A Blume.

Q And did you place them under arrest after that, officer? A Yes, and then I said to detective Foray --

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Q No, you must not tell any conversations you had with anyone when the defendants were not there.

THE COURT: Now, I am going to instruct you, officer, for your own benefit, for use in this trial and other trials: You are not permitted to testify to conversations that you had with people other than the defendants on trial, when the defendants were not present, because it does not bind the defendants; anything that you said, or what anything that anyone said to you, when they were not present; and so, when you attempt to give a conversation with a brother officer, or a number of brother officers, when these defendants were not there, the District Attorney cannot take that evidence, and defendant's counsel objects to it. Now, the way for you to testify in those matters is to say, "I had a conversation with officer so and so," and then you can tell what happened, not what was said.

BY THE COURT:

Q Now, you had a talk with an officer in the automobile, did you? A Yes, sir.

Q Now, what happened after that? A So he went up after the two defendants.

MR. ROSENBERG: Now, I object to what the officer did.

BY THE COURT:

Q Did you see him go up after them? A Yes, sir.

THE COURT: Go ahead.

MR. ROSENBERG: Exception.

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BY MR. DONOHUE:

Q Where did he go? A In the street, between 27th and 28th Street -- in Seventh Avenue.

Q You didn't see the Axlers again that evening, did you?

A No, sir.

Q When you jumped on the automobile, pursuing Blume and Rosenberg, were they in the automobile? A Yes, sir.

Q Was there anything in the automobile besides them, Blume and Rosenberg? A Yes, two sacks.

Q Are these the two sacks that you refer to (indicating)?

A Yes.

Q And what were in the sacks at that time? A Furs and neck pieces and fur goods.

Q Now, what else was in the automobile besides these burlap bags, which contained the furs? A Only the three defendants.

Q Is there any other property? A No, sir.

Q You didn't find anything in the automobile outside of these burlap bags? A No, sir.

Q Did you talk to the defendants in the automobile? A Yes.

Q And did you go back then to 166 West 27th Street?

A Yes, sir.

Q About what time did you go back there? A About 7:30.

Q And who were with you? A Foray, Moriarty and Schauss.

Q And what door did you go to? A Top floor.

Q And did you examine the doors on the way up of all the rooms and lofts? A Yes.

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Q And what did you find on the fourth floor? A I found that a door had been jimmied.

Q Was it locked? A No, sir; it was closed but not locked. After it was broken open it had been closed. I saw the marks where the door had been forced open.

Q Marks beside the lock, do you mean? A Yes. I didn't know that there was a padlock on it until the next day.

Q What kind of lock was on it when you saw that door at that time? A Just an ordinary lock.

Q Some sort of a snap lock? A Well, it had to be locked both sides with a key.

Q And what was the condition of that lock on that door at that time? A You could see the marks where the lock had been forced back and the door was opened.

Q Did you go through the premises at that time? A Yes, sir.

Q Did you notice whether it was in disorder or not? A No, sir. I saw a form laying on the floor, a form what they try a garment on -- and some other stuff was pulled out into the room, some lining. And I secured the premises with a police lock, and the Lieutenant in the 18th Precinct kept the key, after I turned it over to him.

Q Now, when did you see Mr. Friedman after that? A Next morning.

Q Where? A At Police Headquarters. He came there.

Q Did you have the door opened for him there then? A Oh, I met him in Police Headquarters the next morning. I left a note

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and told the officer on post to tell him to go to the 20th Precinct station house in the morning and get the key to open the door.

Q Now, did you have any conversation with the defendants at the Bar at any time? A Yes.

Q When? A The next morning after I placed them under arrest, in the Second District Court.

Q And did you place them under arrest yourself? A Yes, at the Jefferson Market Court.

Q And when was that? A About 10:30 in the morning.

Q Do you know what was going on in the Second District Magistrates' Court that morning? A Yes, sir.

Q Was there any examination going on in the case of the defendants you had arrested the previous evening? A Yes, sir.

Q And that examination was to be held that morning? A Yes.

Q And where did you see the defendants? A Sitting in the audience in the courtroom.

Q And did you then place them under arrest? A Yes, sir; and I brought them down to Headquarters, and said to them, "What do you know about this burglary?" And Abe Axler said, "I don't know anything about it," and I said, "Suppose I tell you your movements from two o'clock to 7:30 at night, will you tell me the truth?" And he said, "Yes," and I told him his movements, and he said he went up there, but he got scared away, both of them got scared away.

Q And is there any doubt in your mind, officer, that these

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two men you have been calling the Axlers, are the men that you followed that afternoon from --

MR. ROSENBERG: Objected to, the form of the question.

THE COURT: Overruled.

MR. ROSENBERG: Exception.

Q Is there any doubt in your mind as to these two men being two of the five men you trailed that afternoon? A No, sir.

Q Now, did you make a search of the premises of Mr. Friedman after you arrested Fershing and Blume? A Yes.

Q And what did you find? A I found that jimmy laying on a work bench (indicating).

Q Where? A In the premises on the fourth floor of that building, Mr. Friedman's place of business.

MR. DONOHUE: I offer the jimmy in evidence.

MR. ROSENBERG: I object, on the ground that it is not connected with either of the defendants.

THE COURT: Does the testimony indicate the floor the complaining witness's loft is on?

MR. DONOHUE: Yes, sir; three flights up, the fourth floor.

BY THE COURT:

Q Now, officer, you say you saw these two men in the hallway on the fourth floor of that building? A Yes.

Q Is that your testimony? A Yes.

THE COURT: I will receive the exhibit in evidence.

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Objection overruled. *e*

MR. ROSENBERG: Exception.)

(It is marked people's Exhibit 1.)

MR. DONOHUE: May I show it to the jury?

THE COURT: Yes, certainly. You must show it, now that it is in evidence.

BY MR. DONOHUE:

Q Now, officer, do you recall how these two defendants were dressed? A I do.

Q Just describe them, will you, please? A The defendant Abe Axler had a green overcoat, tight fitting, with a gray peak cap; the other defendant had a brown overcoat, with a belt in the back, and a brown fedora hat.

Q And when you said you recognized the forms of the defendants, the forms that you have spoken of, or the two forms had on a fedora hat and a peak cap?

(Objected to. Sustained.)

BY THE COURT:

Q Did you not say you saw the two defendants? A No, sir; the forms of the two men.

Q You said a moment ago that you saw these two defendants on the fourth floor. A Yes, sir.

BY MR. DONOHUE: Yes, he said he recognized the forms.

THE COURT: Did he see these two men or not? That is what I want to know.

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BY MR. DONOHUE:

Q Where did you see the two men that you say you saw the forms of? A Through the window. It is frosted glass, like this window here (indicating a side window of the courtroom.)

BY THE COURT:

Q Then you could not see anything through the frosted glass, could you? A Well, the light was strong behind them and I could see the forms, just as plain as if I was across the street, in a really dark place.

BY MR. DONOHUE:

Q But you don't mean to say that you could recognize the faces of the two men, do you? A No, sir; only the forms.

THE COURT: What I am concerned about is the identity of these two defendants. - I do not want any language to cover up a lack of identification. If there is not an identification here, I want to know from this witness whether he testifies that he saw these two men -- I don't care how he saw them or how he identifies them -- but I want to know whether his testimony is that when he looked in that window of that adjoining building, he saw these two men in that room or hall.

BY MR. DONOHUE:

Q Now, did you see these two defendants in the building?

A I seen the form. I knew it was the two defendants.

Q Well, how did you recognize that form? A Why, on their

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general makeup. I could tell Abe Axler when he moved over, with the peak cap, and about his size, and the same with Simon Axler. He walked very straight, and I could tell his actions.

MR. DONOHUE: He is your witness.

CROSS EXAMINATION BY MR. ROSENBERG:

Q Now, officer, you say that when you looked up into that building, at 166 West 27th Street, you were on the opposite side, the northeast corner of 27th Street and Seventh Avenue; isn't that correct? A Yes, sir.

Q And you were on the first floor? Is that correct?

A Yes -- not the first floor -- I couldn't say really what floor it was, but the fire escape was almost on a level with the fourth floor of 166.

Q Now, aren't Fried & Engel on the first floor? A Yes.

Q And didn't you say that you got permission from Fried & Engel to stand on their fire escape? A Yes, sir.

Q And then you told the jury you were on the first floor, looking up, didn't you? A Well, if it is the first floor it is even with the fourth floor of the premises 166.

Q Now, do you want to tell this jury that the first floor of the building you were in, or on the fire escape of, was on a level with the fourth floor of the building that was burglarized?

A Yes, almost.

Q And that is as true as anything else you have said?

(Objected to. Sustained. Exception.)

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Q Now, were you alone at that time? A No, sir.

Q How many other officers were with you? A Four.

Q Weren't you in the premises proper, and not exposed on the fire escape? A Well, I'll tell you -- I will explain --

Q Yes or no.

THE COURT: Let him explain. Let him finish his answer.

A (Continued) It is a closed in fire escape, it is set in, and it is as deep as from here to the wall (indicating).

Q About ten feet? A Yes, sir.

Q That is enclosed? A Yes, it sets right in like a window, which has no glass, and is exposed to the weather.

Q The fire escape is composed of metal? A No, of brick. I think it is made of brick.

Q I wasn't there and you say you were. Now, what was the fire escape ~~was~~ made of? A Well, I didn't pay any attention to the fire escape, what it was made of.

Q And you are unable to say whether it was enclosed in brick or metal sheeting? A Yes.

Q It runs from the first floor to the top of the building, is that right? A I don't know.

Q Is that the best answer you can give this jury? A Yes.

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

Q Well, you got on the fire escape from Fried's loft, is that right? A Yes, that's right.

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Q And Fried's loft is on the first floor? A Yes.

Q And three other detectives were with you? A Yes, sir.

Q Now, weren't you exposed to view from people on the street? A No, sir.

Q Are you sure of that? A Yes.

Q Now, what kept you from being exposed to view? A It was dark there.

Q Is that the only thing? A That was the only thing I could see.

Q In other words, the fire escape was open and the only thing that prevented anyone from seeing you was that because it was dark, is that right? A Yes.

Q Now, was this metal sheeting or brick, between you and the people on the -- between you and the building on the opposite side? A No, sir.

Q It was not? A No, sir.

Q Well, that is what I would like to have the jury understand. A It is an open window.

Q And, if that had been lighted, anyone walking the street could have noticed you? A No, sir.

MR. DONOHUE: How could he tell? He could only guess at that.

THE COURT: Well, he says it could not been seen.

THE WITNESS: If I could have been seen, I wouldn't have been there.

BY MR. ROSENBERG:

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Q Well, what prevented you from being seen? A From the street?

Q Yes. A Because it is up in the air and sets in.

Q How high is the first floor from the street? A Oh, I should judge as high as this room.

Q Well, how high do you think this room is, about? A About 45 feet.

Q And you think that the first story of that building is 45 feet high? A Yes, sir.

Q Now, how about the opposite side of the street? Couldn't they see you, if there was light? A Yes, if there was light where I was.

Q If there was light?

BY THE COURT:

Q Counsel means daylight, as distinguished from darkness.

A No, because I could have manouevered around so that they couldn't have seen me.

BY MR. ROSENBERG:

Q Now, where is the building 166 West 27th Street, with respect to the building that you were in. Between what avenues is it? A Sixth and Seventh.

Q And on what side of the street? A On the south side of the street.

Q You were on the north side, is that correct? A Yes, sir.

Q Now, how near Seventh Avenue is 166? A I should say it is about 100 foot.

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Q Couldn't it be more than that? A It could be more, yes, sir.

Q Well, how much more could it be? A I don't know. I should say it was 100 feet.

Q Could it be 150 feet from where you were? A It might be.

Q Could it be 200 feet? A No, I don't believe it could be. I was only 50 feet from the building. You asked me where the building was, with reference to the corner.

Q All right. You say the distance is about 150 feet from Seventh Avenue? A Yes, about that.

Q And didn't you tell the jury you were about 100 feet from the building where the defendants are supposed to have entered? A No, sir.

Q Are you sure that you didn't say that in your direct examination? A Yes, positive.

Q Now, the building that you say you stood on was on the northeast corner of 27th Street and Seventh Avenue? A Yes.

Q And the fire escape is on what part of the building? A On the rear, towards Sixth Avenue.

Q Towards the rear? A Yes, sir.

Q Well, is it on the rear end of the building, or the front, or the side of the building? A On the rear end of the building, at 27th Street.

Q Is it on the 27th Street side? A Yes.

Q And that is the side of the building, is it not? A Yes,

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the rear side of the building.

Q Now, isn't it on the 27th Street side, or the north side of 27th Street, or is it on the rear end of the building?

THE COURT: Just a moment, before you answer that question, officer.

BY THE COURT:

Q Are there three sides of this building, which you say is on the northeast corner of 27th Street and 7th Avenue? A Well, I don't know, your Honor.

Q All right. There are windows belonging to that building on Seventh Avenue, are there not? A Yes, sir.

Q And windows that run down 60 or 100 feet, to the depth of the building, on 27th Street, towards 6th Avenue? A Yes, sir.

Q Now, the rear of a Seventh Avenue corner building would not be the side that runs down the street, but the side that would face Sixth Avenue, and the wall facing Sixth Avenue would keep the same relative position as the wall of the building facing Seventh Avenue. Do you understand that? A Yes, sir.

Q And when counsel asks you about the fire escape, whether it is on the rear of the building or not. He wants to know whether it is on the wall facing Sixth Avenue. When you speak of the rear, is it the wall facing Sixth Avenue or 27th Street, or Seventh Avenue? A It is the wall facing Sixth Avenue.

THE COURT: Does that bring out what you wanted, counsel?

MR. ROSENBERG: Yes, sir; that is what I wanted.
(The Court admonished the jury and took a recess until two o'clock.)

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AFTER RECESS:

HENRY L. HOFFMAN, his cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued) BY MR. ROSENBERG:

Q Officer, when you left the witness stand before recess, you spoke to your brother officers, didn't you? A No, sir.

Q Didn't you speak to them after you left the witness stand?

A Oh, yes.

Q You were with them, both of them, during recess? A Yes.

Q Both Moriarty and Foray? A Yes.

Q And they are listening to your testimony now, are they not?

MR. DONOHUE: Objected to. How does he know?

Q Are they in the courtroom now? A I don't know. I don't see them.

Q Were they in the courtroom this morning? A Well, I don't know.

Q Well, when you left the stand you went over and spoke to Foray, did you not? A Yes.

Q Didn't you compare notes as to your testimony? A No, sir.

Q Didn't you discuss the case at any time? A No, sir.

Q Did either of the officers discuss the case with you?

A No, sir.

Q Now, is either of those officers in court now? A I don't see them.

MR. ROSENBERG: I will call them. There is no response.

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Q Now, officer, did you testify that these two defendants, in the Magistrates' Court, you followed, as you have testified here today? A What is that? I don't understand.

Q Did you testified in the Magistrates' Court to following the defendants, as you have testified to here? A Yes.

Q You are sure of that? A Yes, positive.

Q You have a memorandum book required to be kept by the Police Department? A Yes, sir.

Q Have you got that memorandum book here? A Yes, sir.

Q Does that memorandum book show the different steps as to the following of these defendants? A No, sir.

Q Does it include the alleged confession that you say you had, that the defendant Abe Axler made to you? A No, sir.

Q And your memorandum book is required to be kept by you at all times while on duty? A No, only the pedigree, and the name of the complainant, and where the burglary was committed.

Q What does the Book of Rules of the Department say as to keeping the memorandum book? A I don't know. I don't recollect just now.

Q And does the Rule Book require you to keep that Book of Rules on your person at all times?

(Objected to. Allowed.)

A No, sir.

Q The rules require you to have a memorandum book, don't they? A I believe so.

Q What is your answer? A I believe so.

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Q You don't know what they require of you? A No, sir; not exactly.

Q How long have you been a detectige? A Since March.

Q Since last March? A Yes, sir.

Q And how long have you been a policeman? A Eight and a half years.

Q And how long have you been on this Loft and Safe Squad?
A Since March. I had been on it previous.

Q You had been on it for a great many years, is that correct? A Oh, I was on it for three years before.

Q And Moriarty has been your partner for how long? A He hasn't been my partner at all.

Q And how long has Foray been your partner? A Since March.

Q And you work together? A Yes.

Q Now, is there anything in that memorandum book about following the defendants? A No, sir.

Q That memorandum was made when? A There is nothing in it about following them.

Q Well, whatever is in your book, when was the memorandum made? A The night of the arrest, the 24th and 25th.

Q And there is no record in that book as to following the defendants? A No, sir.

Q Or about the alleged confession made to you? A No, sir.

Q By the way, will you kindly read the entry that you have there? A Yes, sure.

Q Take the entry of October 24th. A f "Burglary, loft,

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complainant Schelnuck, Friedman & Applebaum, 166 West 27th Street.

Arrested 7:30 P. M. October 24th, Isidor Rosenberg, of 189 Clinton

Street, 25, U. S., single, a plumber. Sam Blume, 64 St. Marks

Place, 27, U. S., married, a hatter. Morris Fershing, 89 Avenue

C, 27, Austria, married, a salesman. Abe Axler, 51 Clinton

Street, 19, U. S., single, salesman. Simon Axler, 63 Clinton

Street, 19, U. S., single, a pedler. Were arrested in front of

premises 166 West 27th Street, after forcing door leading from

hall to loft on the fourth floor, and stealing furs valued at

\$4,000. Property: five fur coats, seven fur coats, unlined,

nine unfinished neck pieces, 19 small fur skins, a small quantity

of fur trimmings. November 2nd, 1921, Second Court, Magis-

trate McQuade, \$10,000 for Grand Jury."

Q So that you have two entries in that book. One is
October 24th and the other is November 2nd? Is that correct?

A No, sir.

Q Well, didn't you read the entry of October 24th? A Yes,
October 24th.

Q And the next entry is November 2nd? A That is when they
were held for the grand Jury in the Magistrates' Court.

Q Don't you understand English, Mr. Hoffman? A Yes, sure.

Q Didn't I ask you whether there were two dates in your
memorandum book? A Yes, sir.

Q One is October 24th and the other is November 2nd?

A Yes, sir.

BY THE COURT:

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Q Is October 24th the date in your memorandum the date on which this offense was committed? A Yes, sir.

Q And November 2nd refers to what? A When they were held in the Magistrates' Court for the Grand Jury.

BY MR. ROSENBERG:

Q And when did you make the entry of the 24th? A On the 25th.

Q Didn't I ask you whether you made the entry on the day that they purport to have been made? A I am positive I made them on the 25th.

Q Both entries? A No, I didn't make the one in the Second Court until November 2nd.

Q And then you say that on October 25th you made the entry dated October 24th? A Yes, sir.

Q Is that correct? A Yes, sir.

Q And it was after you made the arrest of these two defendants that you made that entry, is that correct? A Why, I am not positive. I don't know whether I made it in the morning; and then I took the other two on in the afternoon. I am not sure.

Q Well, what is your best recollection as to when you made those entries? A I can't recall.

Q Now, you made a further report to the Commissioner about this alleged burglary, didn't you? A No, sir.

Q Didn't you sign the report to the Commissioner? A D.B.5.

Q The jury don't know what D. B. 5 is. A Well, I am just stating the facts.

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Q Well, what report, if any, did you make to the Commissioner of Police about this burglary, and the arrest of these defendants?

A Well, we make out a card --

Q No, what did you do? A I made out a report.

BY THE COURT:

Q And you made it out on a card, which is designated D. B. No. 5? A Yes.

Q D. B. meaning Detective Bureau? A Yes, sir.

Q And you wrote out a report and filed it according to the rules of the Police Department? A Yes.

BY MR. ROSENBERG:

Q Where can that report be had? A At Police Headquarters.

Q And it is known as D B 5? A D B. They make the D B 5 when the case is closed.

Q And how is that report indexed? A I don't know. You can ask for D B 4 and D B 5 and my signature.

Q And it bears only your signature? A The commanding officer's also.

Q And it was made out for the arrest of the defendants?
A Yes, sir.

Q Did you say anything in that report about following the defendants? A No, sir.

Q Did you say anything in that report about the alleged confession made by this defendant? A No, sir.

Q And that report is in writing? A In typewriting.

Q In typewriting? A Yes.

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Q Now, when you went up to the premises 166 West 27th Street, and got to the fourth floor, I assume you walked up, didn't you?

A Yes.

Q Were you in the front of the building or the rear, when you walked up? A About the center.

Q So that the hallway is in the center of the building?

A No, the stairway is in the center of the building, I should judge.

Q You should judge the stairway is in the center of the building? A Yes, sir.

Q Is that correct? A Yes, sir.

Q And when you got to the fourth floor -- is that the top floor? A Yes.

Q The hallway runs north and south, is that correct?

A That's right.

Q Does it run from the outer wall on the south side of 23rd Street, south towards 26th Street, is that correct? A I don't quite understand you.

Q Well, when you got up on the fourth floor, there is a hallway? A Yes, sir.

Q And when you leave the staircase, don't you go immediately into the room of the complainants? A You walk a few feet.

Q In which direction? A North.

Q A few feet north? A Yes, sir.

Q Towards the center of the building? A Yes, sir.

Q And that is where the entrance to the complainant's place

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of business is, is that correct? A Yes.

Q And how far is that entrance from the window on the south side of the building, being the front of the building? A About six or eight foot.

Q Are you sure of that? A Pretty sure.

Q Have you measure it? A No, sir.

Q How deep is the building? A I don't know.

Q Well, now, do you want to tell the jury that you saw these two defendants in the hallway before they entered the premises, as you claim? A Yes, sir.

Q You do? A I do.

Q From the position you occupied on the opposite side of the street? A Yes.

Q In the hallway? A Yes.

Q It was dark, was it not? A Not in their hall. They had lighted the light.

Q In the hallway? A Yes.

Q You are sure of that? A Positive.

Q Was there any light in the complainant's place of business?

A No, sir.

Q You are sure of that? A Yes.

Q Then you didn't see any shadows or forms in the complainant's place of business? A No, sir.

Q And what ever you did see was in the hallway? A Yes, sir.

Q Do you know where that hallway runs to? Do you know

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whether it runs up to the window or not? A There is a toilet in between.

Q That is, between the complainant's entrance to his place of business and the window, there is a toilet? A Yes, sir.

Q Does that obstruct part of the hallway? A Oh, if the door was closed.

Q Now, the window in the front of the building on the fourth floor, how high is that window from the floor itself, do you know?

A I don't recall.

Q You say you were in the building, don't you? A Yes, sir.

Q And didn't you examine it? A Yes, sir.

Q Is it as high as this window from the floor in this courtroom (indicating the window behind the witness chair)?

A No, I don't think it's that high.

Q How high would you judge it was? A I should judge from where I was that the room is about eight or nine feet high, the height from the floor to the ceiling in the complainant's loft, and I should judge the window was set about six feet high, and about two foot or two foot and a half from the level of the floor.

Q Do you know how high the floors are in that building?

THE COURT: What do you mean by how high the floors are?

MR. ROSENBERG: I mean from the floor to the ceiling.

A About eight or nine foot, I should judge.

Q That is your best judgment, that the ceilings are about eight or nine feet high? A Yes, sir.

Q And if the window is six feet high, that would leave but

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two feet below the window? A Well, I don't say positively six feet, but that is my judgment.

Q But you say you were there? A But I didn't measure it.

Q Now, going back to the fire escape, do you know the difference between a fire escape and an air shaft? A I think so.

Q Now, are you sure there is ~~an~~ a fire escape on the premises, on the northeast corner of Seventh Avenue and 27th? A Well, there is one question I would like to get answered. Has an air shaft any stairs in it?

Q Now, will you please tell me --

MR. DONOHUE: I think he ought to be allowed to have an answer.

THE WITNESS: I am asking if there are stairs in an air shaft.

BY MR. ROSENBERG:

Q Will you tell this jury whether you were in an air shaft or on a fire escape of the building that you have been describing here this morning? A Well, I would say the fire escape.

Q Now, in order to get what you call a fire escape, how did you get up there? A I went through a door, right opposite the freight first/entrance to the building, and went up the stairs to the first floor, and went to the rear door, and a man came to the door, and I explained who I was and what I was watching, and he said, "Very well, you can stay there as long as you like, and you can open the door when you are going down."

Q And you were with three other detectives at that time?

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A Yes, sir.

Q And during all the time that you say something was going on in the premises opposite, 166, the three detectives and yourself were in those premises, is that right? A Yes, sir.

Q Now, when you got from the freight elevator, you stepped into an enclosure, is that right? A I didn't go into any freight elevator.

Q Then you --

THE COURT: He said he went in the freight entrance, and up the stairs to the first floor, and then through a floor to what he calls the fire escape.

BY MR. ROSENBERG:

Q And that is where you had gone, is it not? A Yes.

Q Throughout the whole time? A No, sir.

Q Now, in that enclosure which you call a fire escape, are there any glass windows? A No, sir.

Q Well, how could you see on the outside? A Well, it's a window, with only a frame in it.

BY THE COURT:

Q It is an open space? A Yes, sir.

Q And there is no substance, no glass, between it and the outer air? A No, sir. There is only a round iron rail that runs from side to side.

Q Just an open space, like an open window would be? A Yes.

BY MR. ROSENBERG:

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Q And immediately to the rear of that building there is another building on 27th Street, is there not? A Yes.

Q And how near does the wall of that building come to where you were standing? A Oh, about six foot.

Q And that building runs how high? A I don't know.

Q Can't you give the jury an idea of how high it is? A Do you mean the building I was in?

Q No, the building next to the one you say you were in.

A I don't know anything about it.

Q Was it one story high? A I couldn't tell you. I didn't notice.

Q Two? A I don't know.

Q Three? A I don't know.

Q Four? A I don't know.

Q Five? A I didn't notice.

Q Now, when you look from the place that you say is the fire escape, to the east, don't you look at the side of that building, the next building? A No, I don't.

Q If a person is on the fire escape that you have described, and he looks eastward, wouldn't he be looking into the side wall of the next building? A No, sir; not where I was. The way I was looking out the front looked out on 27th Street, not Sixth Avenue.

Q Then in order to look towards 27th Street, you had to turn and look south? A Yes, I had to stand south to look out. I was looking in a southerly direction, out of the window that I was

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standing at.

BY THE COURT:

Q You were in the building on the north side of 27th Street? Looking at a building on the south side? A Yes, sir.

BY MR. ROSENBERG:

Q And you want this jury to understand that the building east 166 was not further ~~in~~/from the building where you were standing? A No, sir.

Q Was it further west? A A little west.

BY THE COURT:

Q Was it nearer 7th Avenue? A Yes, sir.

BY MR. ROSENBERG:

Q Nearer 7th Avenue? A Yes, sir.

Q Now, let us get that right. You are sure that the building you say you were watching, 166, was nearer to the Seventh Avenue than the position you occupied at the rear of the building on the northeast corner of 27th Street? A Yes, sir.

Q How much nearer to 7th Avenue was that building than you were?

THE COURT: Now, wait a minute, officer. When you ask a question calling for a comparison of that character, Mr. Rosenberg, you have got to indicate what part of these buildings you refer to. You mean the most westerly wall of 166, do you mean the entrance, or the most easterly wall? What part of the building do you mean? One of these buildings might be a loft building, 200 feet in depth, and

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another might be a little factory building, only twenty feet.

BY MR. ROSENBERG:

Q Now, what frontage has the 186 building, about? A I should judge 30 foot.

Q Is it a modern loft building? A No, it appears to me to be an old tenement house renovated into a loft.

Q And you think it is about 30 feet front? A Yes, sir.

Q And runs back how deep? A I don't know.

Q About?

THE COURT: Now, this is a police officer and he is not an architect or surveyor. Don't expect too much on the matter of measurements from a police officer. The only reason why I make these remarks is that I think too much time is being consumed in this matter to require exact measurements from a police officer, who is not an architect or surveyor.

MR. ROSENBERG: I object and except to the remarks of the Court.

BY MR. ROSENBERG:

Q Now, how deep is the building in 27th Street? A I could not say.

Q Well, it runs a long way from Seventh Avenue to Sixth Avenue, doesn't it? A Yes, it's quite a big building.

Q And it is at least 100 feet deep, is it not? A Yes, I should judge 75 or 100.

Q And you still insist that you were on what floor of the

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fire escape? A The first floor.

Q Do you understand my question? A I do.

Q You say you were on the first floor? A Yes, sir.

Q Now, do you understand that question? A Yes.

MR. DONOHUE: He said so, three times.

BY MR. ROSENBERG:

Q Now, the window in the hallway of the premises, 166 West 27th Street, which you say you looked through, and saw the shadows of the defendants, was a frosted window? A Yes, sir.

Q Not transparent? A No, sir.

BY THE COURT:

Q Not like these windows in this courtroom? A No, sir.

BY MR. ROSENBERG:

Q Not a window like that back of you (indicating)?

THE COURT: Well, that magnificent looking object is painted. I don't think I would use that as an illustration.

MR. ROSENBERG: No, sir. I withdraw the question. It is painted, and badly painted, at that.

Q Well, the glass in the window was ordinary frosted glass?

A Yes, sir.

MR. ROSENBERG: That's all.

J O H N A. F O R A Y, of the Main Office Division,

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

DIRECT EXAMINATION BY MR. DONOHUE:

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Q You are a detective, assigned to the Safe and Loft Squad of the Police Department of the City of New York, are you not? A Yes, sir.

Q And you are what is commonly known as the partner of detective Hoffman, are you? A Yes, sir.

Q Did you have a conversation with somebody in the afternoon of October 24th of this year, and were you told to meet Hoffman? A Yes, sir.

Q Where did you meet, what day? A 23rd Street and Fifth Avenue, about 5 P. M.

Q And when you arrived there did you meet him? A Yes, sir.

Q And who was with you at that time? A Officer Moriarty and officer Schauss.

Q And where was Hoffman standing at the time? A 23rd Street and Fifth Avenue.

Q And did you go any place after that? A Yes.

Q Where did you go? A Into the hallway of a building?

Q What building? A I can't recollect what building.

Q Where was it? A On Fifth Avenue.

Q And who was with you at that time? A Officer Hoffman, officer Moriarty and Schauss.

Q And you had a talk, did you not, with officer Hoffman at that time? A Yes, sir.

Q And did you subsequently see these defendants? A Yes.

Q At that time? A Yes.

Q And did you subsequently see these defendants? A I saw

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these defendants there, with the defendants Fershing and Rosenberg.

Q And when did you first see them? A On Fifth Avenue near 23rd Street.

Q What were they doing at that time? A They were standing near the corner.

Q What corner? A Near the corner of 23rd Street and Fifth Avenue.

Q And what did you see them do at that time? A About 25 or 30 minutes later, the defendant Simon Axler walked to the corner of 23rd Street and Fifth Avenue, where he meets the defendant Blume, with a Packard car, No. 272003, New York.

Q Go on. A And Simon Axler gets into the touring car, and the touring car drives east on 23rd Street, and stops between Third Avenue and Broadway.

Q Who were in that car at the time -- did you see, officer?-- while it was moving? A The defendant Blume, the chauffeur, and no one else was in there until Simon Axler got in, at Fifth Avenue and 23rd Street. The other three stood on the corner of 23rd Street and Fifth Avenue.

Q Go ahead. A Shortly after the defendant Abe Axler, Fershing and Rosenberg walked east on 23rd Street, and starts where Simon Axler and Blume had been with the car. All three then entered the touring car, and the touring car then starts east on 23rd Street, and then went north on Third Avenue. We then went back --

Q What happened to the car then? A We lost track of it

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then.

Q And at what hour was that, officer? A About 5:45.

BY THE COURT:

Q Did you notice which way it turn on Third Avenue? A Yes, sir; north.

Q Were you and the other officers in an automobile?

A No, sir; we were on a streetcar.

BY MR. DONOHUE:

Q Now, when you saw the car disappear north on Third Avenue, at 23rd Street, who was in it? A The defendant Simon Axler, Abe Axler, Fershing, Rosenberg and Blume, the chauffeur.

Q When did you see them again after that? A We then went back to 27th Street and covered the premises 166. We were there about 15 or 20 minutes when the defendants, Simon and Abe Axler, were walking west on 27th Street, and stopped in front of the premises 166, and looked up at the premises. Then they turned back east and go east on 27th Street, about 100 or 150 feet, where the car was standing at the curb.

Q What car? A The touring car.

Q The same car that you saw the five men disappear in, up Third Avenue? A Yes, the same men were in the car that I had seen get into it when it disappeared at 23rd Street and Third Avenue. Then there was a short conversation, and the defendant Fershing and Rosenberg and Abe and Simon Axler come back and enter the premises 166 West 27th Street.

Q Yes. A In there a few minutes and all four come out.

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Q Yes. A And walk back to where the car was, and then a short conversation, and Simon and Abe Axler come back, and Abe Axler first entered the premises 166 West 27th Street, followed shortly after by Simon Axler. They go into the premises. There is a light on the second floor in the hallway. You could see them ascending to the top floor, the fourth floor of the premises.

Q And did the light appear after they entered? A The light had been on the second floor. And they passed up to the fourth floor and the light then appeared on the fourth floor.

BY THE COURT:

Q Officer, you say they entered the building, and you say that you could see them going up from the first to the fourth floor? A Yes, sir.

Q How could you see that? A By the shadows, by their forms. You could see the light in the hall, through the glass.

Q Is there a light, which throws light on the stairway all the way up the building? A All but the top floor, that was out.

Q And that glass looks out on 27th Street? A Yes, sir.

Q And you say when you saw these two defendants entering the building you could see them going up the stairway? A Yes, sir; passing around the window on each floor.

Q And you say they got to the fourth floor? A Yes, sir; and the light appeared on the fourth floor.

BY MR. DONOHUE:

Q Go on, officer. A Then we could see the form of both

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of the defendants on the fourth floor.

MR. ROSENBERG: I object to what we could see. The question is what did he see.

THE COURT: Objection sustained.

BY THE COURT:

Q Did you see the forms of these defendants, these two defendants here, on the fourth floor? A I did.

BY MR. DONOHUE:

Q Go ahead, officer. A They were in the building about 15 minutes, when the touring car drives up and stops about 25 or 30 feet east of the premises 166. Rosenberg and Ferthing had walked to Seventh Avenue, and stopped on the northwest corner of Seventh Avenue and 27th Street. They were there about ten minutes, when the defendants Abe and Simon Axler come out of the premises 166, and walked over to the defendants Ferthing and Rosenberg, who were standing on the northwest corner of 27th Street and Seventh Avenue. The touring car, in the meantime, followed them up and turned north on Seventh Avenue, and stopped on the corner of 28th Street and Seventh Avenue. The defendants Abe Axler and Simon Axler and Rosenberg and Ferthing, after a short conversation, Abe and Simon Axler walked over to the defendant Blume, who was standing at 28th Street and Seventh Avenue, and, after a short conversation with him, the car turned east on 28th Street. The defendants Rosenberg and Ferthing come back and entered the premises 166. In there a few minutes, and the car is coming west on 27th Street, and stops in front of the premises 166 West

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27th Street, a few minutes later. The defendants --

BY MR. DONOHUE:

Q Pardon me a moment. Do you see this man now at the rail (indicating a man standing at the Bar)? A Yes.

Q Is this the man you have called Rosenberg? A Yes, sir.

MR. DONOHUE: Please note, Mr. Stenographer, that Isidor Rosenberg appears at the rail.

Q Now, go ahead, officer. A A few minutes later the defendant Rosenberg comes out of the premises 166 West 27th Street, with a large burlap bag, followed shortly by Ferthing, with another large burlap bag, and they place the bags into the auto and jump into the auto, and the auto was starting west, when officer Hoffman and me jumps on the running boards and placed them under arrest. When I seen they were covered by officer Hoffman, I jumped off the auto and chased Abe and Simon Axler, who were running towards 28th Street on Seventh Avenue, and I fired at them. And there is a subway station there, and they disappeared on me. I followed them down into the subway, but the train had just started, and I didn't see anything of them.

Q And you say that Ferthing and Rosenberg entered the building, and came out with the bags? A Yes, sir.

Q Where were the Axlers when they came out with the bags? A I should judge about 100 or 125 feet from the building.

BY THE COURT:

Q Now, you say that these defendants came out of the building and walked around to where the car was, at 28th Street and

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Seventh Avenue, and after they had talked with Blume, the chauffeur, the car went east on 28th Street. Now, where did the defendants go then? A They were coming back towards 27th Street, on Seventh Avenue.

Q Did they walk back on Seventh Avenue to 27th Street?

A Not quite 27th Street.

Q Then they were in the block between 27th and 28th Streets?

A Yes, sir.

Q Did they stop and linger there? A Yes, sir.

Q What did they do? A They stood there. Possibly they were watching the other two.

Q No. We don't want that. Strike that out. What were they doing there? A Talking between themselves.

Q And do you know whether they stopped nearer 28th or 27th Street on Seventh Avenue? A Well, nearer to 27th Street.

Q When you jumped on the car, which had gone through 28th Street and come down 27th Street, after you saw the bags that you have described put in the car, you jumped on the car, did you?

A Yes.

Q And what was the last you saw of the two defendants?

A Running towards 28th Street.

Q On Seventh Avenue? A Yes, sir; on Seventh Avenue.

Q And then you jumped from the car and pursued them? A Yes.

Q To what point? A 28th Street, and they turned east on 28th Street.

Q Did they run through 28th Street? A I don't know.

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I didn't see them. There is a subway station there, and I didn't see them running through 38th Street, and I thought they had gone down into the subway.

Q Where were you when you say you fired the shot or shots?

A On Seventh Avenue.

Q And they kept on running? A Yes, sir; they kept on running.

Q Did you shout anything at them? A No.

Q How near were you to them at the time you fired the shot?

A Oh, about 75 or 100 feet.

Q About what time of night was this? A This was about 7:30 or 7:20.

BY MR. DONOHUE:

Q And that was the last you saw of them that night? A Yes.

Q Now, were you present when officer Hoffman put them under arrest? A I was.

Q Did you have any talk with them? A No, sir.

Q Did you hear Hoffman have any talk with them? A No, sir.

Q You didn't hear any talk from them or with them at any time, did you? A No, sir.

Q Now, is there any doubt in your mind that these are the two men that you have been calling the Axlers? A No, sir.

BY THE COURT:

Q And are you sure they are the men whose actions you have described? A Positive.

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CROSS EXAMINATION BY MR. ROSENBERG:

Q Now, officer, have you spoken to officer Hoffman about this case? A When?

Q Have you spoken with officer Hoffman about this case?

A I have.

Q How often? A About twice.

Q When? A I don't recall the dates.

Q Did you speak with him about it today? A No.

Q Did he speak with you about the case today? A No.

Q You were present in the courtroom and heard his testimony this morning? A No, sir.

Q Weren't you in this courtroom when he was on the stand?

A No, sir; I came in later on.

Q Weren't you in the courtroom before recess, when Hoffman was testifying? A I was here before recess, yes.

Q And you heard him testify? A No, sir; I was outside at the time. I went down for the evidence.

Q Then before the Court took the recess, you were sitting in the courtroom, and heard him testify? A No, sir; I wasn't in the room when he was on the stand.

Q And when he got off the stand you spoke to him, didn't you? A Yes, he spoke to me.

Q Did you speak to him about his testimony? A No, sir.

Q And about what you were going to say? A No, sir.

Q Did you speak about the fire escape? A No.

Q He didn't speak at all about the case? A No.

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Q Now, who else was with you during the recess, besides Hoffman? A Officer Moriarty.

Q And Sohauss? A No.

Q And you didn't speak about the case after recess? A No, sir.

Q As to what you were going to say, or what Moriarty was going to say? A No.

Q Did you refresh your recollection as to what you were going to say? A I did this morning.

Q While Hoffman was there? A No.

Q Why did you refresh your recollection? A I refreshed it at home.

Q But why? A So I would know what I would have to say.

Q Now, you refreshed your recollection from your memorandum book, didn't you? A No, sir.

Q Well, what did you refresh your recollection from? A A slip of paper that I had.

Q Where is that slip of paper? A I left it home.

Q Have you a memorandum book showing an entry showing an entry about this case? A Not with me.

Q Don't the rules require that you should keep the memorandum on your person while you are on duty? A Not in the Detective Bureau, no.

Q Well, when you were a patrolman didn't you have to do so?
A Yes, sir.

BY THE COURT:

Q Is it or is it not a rule that detectives are required to

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keep a memorandum book? A Yes, they are required to keep a memorandum, but it don't say that you have got to carry it at all times on your person.

BY MR. ROSENBERG:

Q And the rules require you to put the different things that transpire about a case into the memorandum book, so that when the case comes up, a long time after the occurrence, you can refresh your recollection? A Yes.

Q Now, you wrote something on a piece of paper, didn't you? Is that right? A Yes.

Q And you refreshed your recollection from a piece of paper, is that right? A Well, that's all the memorandum book is, nothing but a piece of paper.

BY THE COURT:

Q No. Now, you know the difference between a piece of paper and a book. Now, answer the counsel's question. Did you have a memorandum on a slip of paper, or written in a memorandum book?

A A slip of paper.

Q And what you put down on the slip of paper wasn't in the memorandum book? A The names of the defendants I have in my memorandum book.

Q (Repeated.) A No.

BY MR. ROSENBERG:

Q Now, you were present when Hoffman made the arrest, weren't you? A I was.

Q Where was the arrest made? A The arrest was made in the courtroom.

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Q By whom? A By officer Hoffman.

Q Were you there? A I was.

Q Did you assist? A Well, there was no assistance necessary -- yes, I assisted.

Q And you took these two young men from the courtroom as part of the audience, and what did you do with them? A Officer Hoffman took them down to Police Headquarters.

Q Didn't you go with him? A No.

Q Are you sure of that? A I am positively sure.

Q Didn't Hoffman have a talk with the defendants, then and there? A Not in my presence. I don't know whether He did or not.

Q Did he have any talk with them while you were there? A No.

Q Did you witness any talks between the defendants and Hoffman? A No.

Q And while you were there, didn't Hoffman take them to the pen of that court house, the Jefferson Market Court House? A No.

Q Well, where did he bring them then? A He brought them to Police Headquarters.

Q Who accompanied them, outside of Hoffman? A I don't know.

Q Now, when you say Blume, Rosenberg, Fershing and these defendants got into the vicinity of 166 West 27th Street, where were you? A When Simon and Abe Axler got in front of the premises 166, and looked up at the premises, I was standing on the corner of 27th Street and Seventh Avenue, on the southeast corner -- no, the northeast corner, on the street.

Q Where was Hoffman at that time? A He was with me.

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Q Who else was with you? A Officer Moriarty.

Q Anyone else? A And Officer Schauss's.

Q And then you were all there? A Yes.

Q And how long had you been following these several men whom you have described, from five o'clock until when?-- how long in all were you following them? You got to Fifth Avenue and 23rd Street about five o'clock? A Yes, sir.

Q With Moriarty and Schauss? A Yes, sir.

Q Is that correct? A Yes, sir.

Q And you got some information from Hoffman about these men, is that correct? A Yes, sir.

Q Which led you to believe that they were going to commit a crime? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Hoffman told you, didn't he? A Yes, sir.

Q And he told you where they were going to commit the crime, didn't he? A He did.

Q Where did he tell you they were going to commit the crime? A 166 West 27th Street.

Q And that was at five o'clock, is that right? A About five.

Q And then you finally followed these defendants, with others, to the premises 166 West 27th Street? A From Fifth Avenue and 23rd Street.

Q You finally followed them to these premises in 27th Street? A Yes, sir.

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Q And then all four went upstairs, is that correct? A Correct.

Q That is, Rosenberg, Fershing and the two defendants, is that correct? A Correct.

Q Now, where were you when they went upstairs? A On the opposite side of the street, on the first floor.

Q Who was with you? A Officers Hoffman, Moriarty and Schauss.

Q How long had you been on the first floor on the opposite side of the street before the four men entered the premises?

A About five or ten minutes.

Q You are sure of that? A Positive.

Q Now, what part of the first floor of those premises were the four men on? You four men? A The fire escape. There is a fire escape there that is in the building, and doesn't extend out of the building, and we were in that fire escape. It has an opening in front, right opposite the premises 166, almost level with the fourth floor.

Q The first floor of those premises is almost level with the fourth floor of the premises 166? A Yes, sir. The premises 166 is ^aremodeled tenement house, I think.

Q And have you discussed with Hoffman the location of the first floor with reference to the premises 166? A No, sir.

Q At no time? A No, sir.

Q And you didn't think it important to impress upon the jury the relative positions of those premises, did you? A Well, I guess it is important.

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Q Didn't Hoffman tell you it is important? A Never, never a word to me.

Q Now, you say that the men went up into the building, - you saw their shadows -- is that correct? A Yes, sir.

Q By the way, you were in those premises, 166, weren't you? A I was.

Q And the hallway runs from north to south, doesn't it? A Yes.

Q When you enter, you enter into a hallway? A Yes.

Q And how far back do you go before you reach the steps leading upstairs? A About 15 feet.

Q And then the stairs run perpendicularly upward? A Yes.

Q And the stairs are about 15 feet from the front of the premises? A You have got to come around this way (illustrating).

Q (Repeated.) A Yes.

Q Is that correct? A Yes, correct.

Q And when you go around, as you say, how near do you come to the front of the premises, when you are turning the stairs, going up? A About four or five feet.

Q You are sure of that? A Yes.

Q And how high is the window from the floor in the hallway? A About three feet.

Q And how large is the window? A About six feet.

Q And you didn't discuss the question of dimensions at all with officer Hoffman? A Never.

Q Now, on the top floor, how far is the door leading into

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the complaining witness's premises from the outside of the building? A About five feet.

Q Sure of that? A About.

Q Well, you say about? Could it be less or more?

THE COURT: Well now, we all know what "about" means. I think that every juror understands what the witness means by that expression.

BY MR. ROSENBERG:

Q At any rate, when these men entered the building, you were across the street, in this fire escape? A Yes.

Q Wasn't there any talk between you and Hoffman about the use of the term "fire exit"? A No, sir.

Q Well, how do you get into this fire exit? A From a loft and also from a hallway. I got into it through the loft.

Q Didn't you all go up together, you officers? A No, sir.

Q Were they there before you got up there? A Yes. Two or three minutes elapsed between.

Q Now then, there was a time when the chauffeur was down at 28th Street and Seventh Avenue, while you were at the corner of 27th Street and Seventh, on the street? Is that correct?

A That's correct.

Q And you had a good idea that he was there for an unlawful purpose, didn't you? A Yes.

Q From what Hoffman told you? A No, from what I had seen.

Q There was a time when the four men were in the building, is that correct? A Yes, sir.

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Q When you and your brother officers were downstairs, at the entrance of the building? A No, we were up on the fire escape, when the four of them was in there.

Q And how long would it take you to get from the escape across the street? A About three or four minutes, I guess.

Q By the way, was the loft of Fried open when you got there? A Yes, sir.

Q Didn't this thing happen on Sunday? A No, sir.

Q What day did it happen on? A October 24th.

Q What day of the week was that? A I think it was on Monday.

Q Monday? A Yes.

Q Are you sure of that? A I think so, yes.

Q Well, it would take you two or three minutes to get across the street from the northeast corner of 27th Street, to go across the street to 166? Is that correct? A There is an entrance right opposite 166.

Q I know that. A Two or three minutes to go down the stairway and across the street. The stairway was dark where we were, and we didn't want to break our necks, and we wanted to be careful, and it took several minutes.

Q Was there a fight in the building where you were? A In the building there was plenty of light, up in the other lofts, but the light was shut off where we were.

Q All right. There was a time, then, when the four men, including the two defendants, as you say, were in 166? A Yes.

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Q And how long were they in those premises? A Five or six minutes.

Q At least? A At least, yes.

Q Now, officer, you examined the premises 166 West 27th Street, after this burglary was committed, didn't you? A Yes.

Q And you found that there was an entrance, and went inside of those premises, isn't that correct? A Yes.

Q The entrance where you say the four men went into? A Yes.

Q The rear entrance was bolted and barred, is that correct, or was there a rear entrance? A Not that I know of.

Q Now, when you were in this fire escape, or fire exit, in order to see the premises 166, in which direction would you have to look? A South on 27th Street.

Q Now, is there not a building which adjoins these premises where you were in, immediately in the rear of those premises, is there not a side walk of another premises or another building?
A Yes, sure.

Q How high is that other building? A Oh, I don't know.

Q But the opening you say faces the premises on the opposite side of the street? A The fire exit and the opening face 27th Street. It is on the 27th street side of the building I have been in.

Q By the way, is that fire exit enclosed? A It is enclosed in the side and back, yes, but the front of it is open. It's like an open window, but there is no opening in it.

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BY THE COURT:

Q If you walked out of the opening, would you come to iron stairs? A No, sir; you would fall to the sidewalk.

Q And how far would you fall from where you were standing? A Oh, I should judge 50 or 75 feet.

Q Do you mean an exit for people to get out of the building, in case of fire? A Yes, sir.

Q And to get out they would have to drop 75 feet? A Well, I guess they use ladders. The fire engines would get there, when there is a fire and they would shut the door, and they would stand out there till the fire engines get there, and then they put up the ladders and take them down.

BY MR. ROSENBERG:

Q Do you tell the jury there is a 75 feet drop there? A Yes, about 50 or 75 feet perhaps.

Q And you didn't see any ladder there? A No, sir.

BY THE COURT:

Q Officer, do you mean that you were looking out of a place and that if any one of you officers had lost your balance you would have fallen out and down in the street? A No, sir; there is like a railing there, a low railing.

Q To prevent anybody from walking out of the building and falling into the street below? A No, sir; there is a railing there.

BY MR. ROSENBERG:

Q Is there not an electric light on the corner of 27th

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Street and Seventh Avenue? A Yes.

Q How many electric lights are there on those corners there? A I don't know.

Q Well, there is one on the northeast corner, is there not? A I wasn't interested in the electric lights on the corners.

THE COURT: If you do not know, just say you do not know. That is the answer.

THE WITNESS: I don't know.

BY MR. ROSENBERG:

Q Well, that corner is illuminated by electric lights, is it not? A Yes, sir.

Q And there is a car line running on that street? A On Seventh Avenue, yes.

MR. ROSENBERG: That's all.

MR. DONOHUE: That is the People's case, if your Honor please.

(Mr. Rosenberg then opened the case for the defense:)

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THE DEFENSE:

S I M O N A X L E R, of 61 Clinton Street, one of the
defendants, being duly sworn as a witness in behalf of the
defendants, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Now, keep your voice up. What is your full name? A Simon
Axler.

Q Where do you live? A 61 Clinton Street.

Q How old are you? A Nineteen.

Q When were you nineteen? A October 2nd.

Q With whom do you live? A My people.

Q Father and mother? A Father, mother, sisters and brothers.

Q Now, were you in the neighborhood of 27th Street or 28th
Street, on October 24th? A No, sir.

Q Were you in the neighborhood of 23rd Street and Fifth --
A No, sir.

Q -- on that day? A No, sir.

Q Please wait until I finish my question, and then answer.
A No, sir.

Q Do you know a man who was brought to the bar, just now,
by the name of Rosenberg? A No, sir.

Q Do you know a man by the name of Morris Fershing? A No, sir.

Q Do you know any chauffeur by the name of Samuel Blume?
A No, sir.

Q Did you ever talk to the chauffeur -- A I did not.

Q On 28th Street and Seventh Avenue, on the evening of

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October 24th? A No, sir.

Q Did you ever ride in an automobile through 23rd Street, or any other place, with the people whose names I have mentioned?

A No, sir.

Q Were you ever in the premises 166 West 27th Street?

A No, sir.

Q Did you commit a burglary in those premises, or assist anyone else to commit a burglary there? A No, sir.

Q On the night of October 24th, or at any other time? A No.

Q Did you mean that you did not commit any burglary? A I did not.

Q Did you steal any furs? A I did not.

Q Did you walk up the stairs on that afternoon or evening, with other men? A I was never around there.

Q Are you sure of that? A I am.

Q And you have been in jail ever since you were arrested?

A Yes, I've been in the Tombs.

Q That is, awaiting trial? A Yes, sir.

Q When were you arrested? A We were arrested on October -- it was a Tuesday morning. I don't recollect the date.

Q Well, you were arrested Tuesday following the alleged burglary, which would be the 25th? A Yes.

Q Where? A In Jefferson Market Court.

Q What were you doing that day? A We were supposed to go peddling that day, and we went down to Washington Market, and couldn't buy any stuff, because it was too high; and we figured

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we couldn't make any money; and, on our way back we passed the Jefferson Market Court, and me and my cousin went in there to hear some cases, and we sat there about two hours. And two gentlemen come over and said that they wanted to talk to us, and they took us into a room and said they wanted to take us down to Headquarters, and we asked them what for, and they said for a burglary in 27th Street, and we said we didn't know anything about it, and they got punching us around.

Q Is the co-defendant your brother? A No, sir; my cousin.

Q Were you on Seventh Avenue that evening, and were you running, and were you pursued by an officer who fired a shot?

A No, sir.

Q Were you ever convicted of any crime? A Never.

Q Now, what have you been doing with yourself for the last few years? A I was working for a dress manufacturer uptown.

Q What was his name? A Charles Bernstein & Company.

Q What is the address? A 21 West 21st Street.

Q Doing what? A As shipping clerk.

Q Did you work for anyone else? A When there was no work to be done, I got a license and went out peddling fruit.

Q Have you got the license with you? A No, sir; not with me. It is at home.

Q And was your own name used in the license? A Yes. I've had a license for years. When I wasn't working I would jump out with a horse and wagon and buy a load of fruit, and sell it.

MR. ROSENBERG: He is your witness.

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CROSS EXAMINATION BY MR. DONOHUE:

Q You don't know Rosenberg, you say? A No, sir.

Q Don't you know that he lives in Clinton Street, right by where you live? A I don't know him.

Q You don't know him? A No, sir.

Q Don't you know he lives at 189 Clinton Street? A I never seen him before, only when I seen him in the Tombs.

Q Didn't you talk with him in the Tombs? A No, sir.

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

Q Didn't you talk to him? A No, sir.

Q Didn't you go to him and tell him to say that he wasn't with you that night? A I never did. I never even talked with him.

Q He was on the same tier that you were on? A That's makes no difference.

Q He was in almost the adjoining cell? A Well, that don't mean anything.

Q And you met during the exercise hour every day? A Yes.

Q And didn't you talk to him about this case at all? A No, sir.

Q Didn't you ask him how he came to be arrested and tried for the same indictment with you? A Yes. He said he didn't know me at all. He said to me, "Do you know me at all; you don't know me, do you?" And I said "No:"

Q Did you ask him whether he was concerned in this burglary? A No, sir.

Q And you don't know Fershing either, do you? A No, sir.

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Q And he lives quite near you, too, doesn't he? A I don't know him.

Q What were you doing, this Monday night? A I was out with a girl, me and Abe Axler.

Q You and this defendant? A Yes, sir.

Q Out with the same girl? A Yes.

Q What time did you start out? A We started out about seven o'clock.

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

Q That was on a Monday night? A Yes, sir.

Q Weren't you working on that day? A No, sir; it was a holiday.

Q Oh, it was a Jewish holiday? A Yes.

Q And where did you go that night? A Well, we took the girl for a bus ride.

Q Where did you go? A We got off at --

Q Where did you start from? A Washington Square.

Q Did you walk down to Washington Square? A Yes, sir.

Q Who was with you? A Me and Abe Axler.

Q And what was the girl's name? A Mary.

Q What is her last name? A I don't know. I flirted with her and picked her up.

Q And how long were you with her? A I left her at ten o'clock.

Q You were with her from seven to ten? A Yes, sir.

Q Did you ask her for her name? A Yes.

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Q And what name did she give you? A Mary.

Q And what was the second name? A I don't remember.

Q Where did she live? A I don't know. When I tookd her home I took her as far as the subway at Spring and Lafayette.

Q Have you looked her up since that night? A No, sir.

Q Did you get Mary's telephone number? A No, sir.

Q Didn't you want to meet Mary after that night? A Well, I don't know. I didn't make no special date with her.

Q And didn't get her address? A No, sir.

Q And you have no idea where she lives at all? A No, sir.

Q Now, you were on this bus from seven to ten, were you?

A No. At seven o'clock we started to take the bus ride, and when we got uptown we stopped in to have coffee and cake.

Q Where? A At a restaurant on St. Nicholas Avenue and 155th Street.

Q How far did the bus go up? A 155th Street.

Q What streets did you go through? A Up Fifth Avenue, and then she goes over to Columbus Circle, through 59th Street.

Q Are you sure it is 59th Street? A Or 58th Street or 57th Street, I think it is.

Q And how far west did you go on 57th Street? A To Riverside Drive.

Q On 57th Street to Riverside Drive? A Yes.

Q Well, part of the Drive is on 57th Street? A She went through 57th Street.

Q To what avenue? A To Riverside Drive.

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Q And then started up Riverside Drive to where? A To St. Nicholas Avenue.

Q Keeping on the Drive all the time? A On the Drive all the time.

Q And, as you went through 57th Street, did you go over towards the water? A Yes, sir; that is Riverside Drive.

Q And how far did you go along the water? Up to St. Nicholas Avenue, you say? A Well, I don't recollect how far.

Q Well, about how far up the waterfront did you go from 57th Street? A From 57th Street?

Q Yes. A Maybe about up to 125th Street.

Q And which way did you go after that? A She turned in St. Nicholas Avenue.

Q Is that west or east? A West.

Q You went west from the Drive to St. Nicholas Avenue?

A Yes, and got off at 155th Street.

Q And Amsterdam Avenue? A St. Nicholas Avenue.

Q Does the bus stop there? A Yes.

Q Have you any idea of what hotel is on the corner there?

A I didn't take notice.

Q Is there not a big building there, a great big white building? A I can't say.

Q Don't you remember whether there was one or not? A I did not look around.

Q You didn't notice? A No, sir.

Q Were you so interested in Mary that you couldn't see any-

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thing else, you couldn't tell whether there was a park, or a big building there? A Well, I didn't take notice, I was talking. I paid attention to the girl, that was all.

Q And where did you go at St. Nicholas Avenue? A Walked into a restaurant, on the left hand side of the street.

Q On the corner? A No, about the middle of the block.

Q What block? A Between 155th and 156th Streets.

Q On St. Nicholas Avenue? A Yes, sir.

Q And you went into a restaurant? A Yes.

Q And was it a great big restaurant? A A plain ordinary restaurant.

Q Were there any table cloths on the tables? A There must have been.

Q Well, don't you remember? A Sure.

Q You wanted to give Mary a good time, didn't you? A Yes.

Q And you were bringing her to a swell place, as you thought? A Yes.

Q You wanted to bring her to a high class restaurant, didn't you? A Yes.

Q And what kind of a restaurant did you pick out? Just give us an idea of what it looked like from the outside? A I didn't notice.

Q Well, you were looking for a high class restaurant?

A I don't know. They charged the same as they would in a high class restaurant.

Q What did they charge? A A dollar.

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Q What did you have? A Just coffee and cake.

Q The three of you had coffee and cake? A Yes.

Q And this restaurant is on the right hand side, you say?

A Yes.

BY THE COURT:

Q Going up or down? A The right hand side going up.

BY MR. DONOHUE:

Q The right hand side going up? A Yes, sir.

Q Now, you are sure of that? A Yes, sir.

Q Now, how long were you up there? About how long did you stay in this restaurant? A About half an hour.

Q About what time was it that you got on the bus, at Washington Square? A About seven o'clock.

Q And when did you reach 155th Street? A Eight o'clock.

Q Were you on the same bus all the time? A Yes.

Q Didn't transfer at all? A That's where you transfer, from St. Nicholas Avenue.

Q Now, after you got up there, and you had your coffee and cake, or whatever it was, where did you go? A Took the bus and went home.

Q Who took the bus? A Me and him and the girl.

Q And when you say "went home", where did you go to? A Why, we took her down to Washington Square, and walked her over to the subway.

Q I thought she lived uptown? A Well, she wanted to go back with the bus, for the ride.

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Q Didn't you say before she lived uptown? A No, sir.

Q Well, where did she live? A I don't know. I met her in front of my house.

Q In Clinton Street? A Yes.

Q And you just said, "Come and have a ride," and she did?

A Yes.

Q And you got down as far as Washington Square with her?

A Yes.

Q And where did you go then? A We walked her to the subway station, at Spring and Lafayette Street.

Q To which subway did she want to go, do you know? A The uptown subway.

Q Well, didn't she say the west side or east side? A No, sir.

Q She told you she wanted to go to that particular station, Spring and Lafayette Street, did she? A Yes, sir.

Q And when did you get to the subway station? A Somewhere around ten o'clock, or half past nine.

Q And where did you go when? A Home.

Q What do you mean by home? A Stepped in to get a pack of cigarettes and went to bed.

Q Did you have any more coffee? A No, sir.

Q What time did you go home to bed that night? A About half past ten.

Q You always go home about half past ten and go to bed, don't you? A Yes, sir.

Q You are very seldom out later than half past ten?

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A Very seldom, yes.

Q And who was at home when you got home? A Father, mother, sisters and brothers.

Q Father, mother, sisters and brothers? A Yes.

Q And do you say you were in the house that night, from ten o'clock until the following morning? A Yes.

Q Who did you sleep with that night? A My brother, a little older than I am.

Q What is his name? A Irving Adler.

Q Is he here in court? A No, sir.

Q You slept together in the same room, you and Irving?

A Yes, sir.

Q Anybody else in the same room with you? A No, sir.

Q What did you do the next morning? A Got up at five o'clock in the morning.

Q Where were you going? A Going down to buy fruit.

Q But you didn't have any money, did you? A I could get the money off my people.

Q Did you get any money? A Yes.

Q How much did you get? A \$100.

Q And what kind of a wagon did you have? A Didn't get the wagon yet.

Q What were you going to do? To buy a wagon? A No, sir; we don't hire the wagon until we get the stuff.

Q You first go to the market and buy the fruit? A Yes, sir.

Q And then you buy the wagon? A No, we don't buy the

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wagon.

Q Where were you going to hire it? A On Willett Street.

Q Were you going over on the WestSide to buy your fruit first? A Yes. .

Q And how were you going to get it over in this wagon on the East Side? A The people I buy the stuff from were going to deliver it, the stuff, to my house.

Q The wholesale dealers in the market were going to deliver the stuff to you, cart it over to your house? A Yes.

Q What were you going to buy? How many oranges? A Ten or fifteen boxes, but the stuff was too high.

Q What was the price of the stuff? A \$4.50 for a box of oranges.

Q How many boxes did you intend to buy that morning?

A Ten or fifteen boxes.

Q Ten or fifteen boxes? A Yes.

Q And you say, when you got over there, the price was too high? A Yes.

Q Well, \$4.50 wasn't too high, was it? A Well, it was too much money for me to pay.

Q Well, didn't you have \$100 with you? A Certainly I had, but that has nothing to do with it.

Q Well, why did you borrow \$100 from your people? A To buy stuff, but the stuff was too high.

Q Were the oranges any higher than usual that morning?

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A Yes, over a dollar more than usual.

Q When did you last buy oranges before that day? A A couple of days before.

Q What day was it? A The last Friday.

Q No. But I am speaking of when you were arrested. You were arrested on Tuesday morning? A Yes.

Q Now, when before that did you buy oranges over there at the market? A A couple of days before.

Q Well, don't you know what day? A Well, Friday, say.

Q What did you pay for them? A \$2.50 a box.

Q How many boxes did you buy? A Ten cases.

Q Did you sell them? A Yes.

Q What did you do with the money? A Well, as much as I like, I give it at home to my people.

Q Well, you said you were broke, and had to borrow money from your mother. A Well, whatever money I make I give to my father or my mother, and I went to her and said, "I want money to buy stuff," and she said, "Here's \$100, go and buy the stuff."

Q Did she intend you to invest \$100 in oranges? A No, sir; only if I found some cheap oranges I could buy them.

BY THE COURT:

Q How much did you invest in oranges the last time you purchased oranges, before your arrest? A \$35.

BY MR. DONOHUE:

Q What did you sell them for? A Eight for a quarter.

Q Where did you stand to sell them? A Ninth Avenue and

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42nd Street.

Q And did you sell all you had that day? A Yes, sir.

Q And how much profit did you make out of a load like that?

A I might have made \$20 profit.

Q How much did the truck cost you? A \$3.

Q Did you drive it yourself? A Yes.

Q And you only made \$20 by selling them that way? A Yes, sir.

Q And when is the next day before that that you were out peddling? A Saturday.

Q Well, what did you do when you didn't go out? Did you go to the Magistrates' Court, listening to cases? A No, I go up to work for this Birnbaum.

Q Is he in the silk business? A No; dresses.

Q Where is his place of business? A 21 West 21st Street.

Q And you say you worked for him? A Yes, when they have work.

Q And otherwise you go out peddling oranges, is that correct? A Yes.

Q Now, how did you happen to be in the Magistrates' Court that day? What caused you to go in there that particular day? A Well, I used to go in there when I got a summons for standing on the wrong side of the street, and I went there to pay a fine, sometimes.

Q Well, how often did that happen? A Very seldom, once in a while.

Q Well, how often did it happen in all your life? A Well,

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when I was outside peddling and I got a summons, I would walk in and pay the fine. Maybe the last time was three months ago.

Q Well, how many summonses did you get altogether? A Two summonses.

Q And so you had nothing to do on this particular day, and you walked in there? A Yes.

Q And you had never been there before as a spectator, had you? A No, sir -- yes, I had been there before.

Q When were you there the last time before that? A A couple of months before.

Q Haven't you any idea when it was? A I can't recollect.

Q What Judge was sitting, do you remember? A I don't remember his name.

Q You have no idea? A No, sir.

Q Well, had you been there before that occasion -- as a spectator I mean now? A No, sir.

Q The only times you were in court, then, were once four months ago, and once again on October 25th? A Yes.

Q And you had no interest there at all on October 25th? A No, sir.

Q You were not there because your friend Rosenberg, who lived in Clinton Street, and your friend Fershing, who lived in Avenue C, and your friend Blume, who lived in St. Marks Place, were on for examination that morning? A No, sir.

Q You were not interested in them at all? A No, sir.

BY THE COURT:

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Q You got to the market at five o'clock, did you? A Yes.

Q And when you found out that you couldn't buy oranges at a reasonable price, you left there? A Not right away. They don't open until half past six or six o'clock there.

Q And what did you do when you made up your mind not to buy any oranges? A Well, I walked around, looking at the different stands.

Q When did you leave the market? A About half past eight.

Q You were not two hours in the Washington Market with the orange dealers that morning, were you? A Yes.

Q How many men are there who sell oranges by the cartload, or twelve boxes at a time? A There might be fifty or sixty.

BY MR. DONOHUE:

Q And did you take up all this time going around to ask the prices of these men? A I did.

Q And, as matter of fact, isn't the price the same all through the market? A No, sir; it isn't.

Q And you went from stall to stall, feeling each orange, examining it, and then having the price told you? A Yes.

Q And when you got through with that, you had nothing else to do, and you decided to go to the Magistrates' Court? A No, but I just passed by the court and thought I would step in.

Q What time did you get there? A About nine o'clock.

Q And the court had not opened at that time, had it? A No, sir.

Q And you sat around there for it to open? A Yes, sir.

BY THE COURT:

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Q Where were you going when you left Washington Market?

A Going home.

Q Well, Tenth Street and Sixth Avenue is not in the direction of Clinton Street? A No, sir; but you have to pass Jefferson Market, after you leave the Washington Market, to get to Clinton Street.

BY MR. DONOHUE:

Q Did you go through Eighth Street? A No, sir; through Tenth Street.

Q Well, why didn't you go down through Seventh Avenue, and go through Eighth Street to the East Side? A I just happened to walk through Tenth Street.

Q And you recognized the court building, as you passed it, as being a court house? A Yes, sir.

Q And you lived at that time at 61 Clinton Street? A Yes.

Q And between what streets is that? A Between Rivington and Stanton.

Q And, by the way, where does this other defendant live?

A Right alongside of me, 63 Clinton.

Q What is this man's name you worked for, as I understood you to say? A Charles Birnbaum.

Q 21 West 21st Street? A Yes, sir.

Q He is a relative of yours, isn't he? A He is not.

Q Isn't he a relative of yours? A No, sir.

Q A friend of your family's? A He might be a friend of my father.

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Q Well, don't he visit your house? A Once in a while.

Q Isn't he a friend of your brother's? They go together, don't they? A No, sir.

Q Well, he is a friend of your father's? A He might be a friend of my father's.

Q (Repeated.) A Yes.

Q As matter of fact, didn't you send one of your relatives up to see him and ask him to come down here and say that you worked for him, while, as a matter of fact, you never worked for him? A No, sir.

Q Did you ever hear of anybody going up there to do that for you? A No, sir.

Q How old a man is he? A A man about 35.

Q A man about 35? A Yes, sir.

Q About how often did he come to your house? A I haven't seen him in our house for a long time.

Q Pardon me? A I haven't seen him there for a long time.

Q Well, before you were arrested, how often did you see him? A Maybe a year ago.

Q What do you mean, that you haven't seen him? Didn't you work for him? A I didn't see him, that is, I didn't see him at my home.

Q How long did you work for him before your arrest?

A Two years.

Q Where did you get the pedler's license? A I had it for six years before that.

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Q And you had to renew it every year, didn't you? A Yes.

BY THE COURT:

Q Just a minute. Do you mean to say that you had a pedler's license when you were 13 years old? You say you are 19 years old now. A Well, when I was 14 years of age I had a pedler's license.

Q You have had a pedler's license every year since? A Yes, I renewed it every year.

Q Although you worked steadily for the last two years, you say, for Birnbaum? A Yes.

Q And when you say steadily, what do you mean? Six days a week? A Yes, sir.

Q For two years? A Yes, sir.

Q During that last two years, how many days had you been out peddling? A Well, when there was no steady work I went peddling.

Q Well, for two years you didn't do any peddling? A No, sir.

Q That is, for the year 1920 and the year 1921, is that right? A Well, I peddled before I was arrested.

Q How many days in the month of October did you peddle? A About a week.

Q That is, every day for a week? A No -- well, in the month of October I peddled for about a week.

Q And in the month of September how many days did you peddle? A I didn't peddle at all.

Q Nor for the month of August you did not peddle? A No, sir.

Q So in two years the only peddling you did was just a few

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days before your arrest? A Well, I peddled on and off.

Q You said you did not peddle while you were steadily employed, and you said that you were steadily employed for two years?

A Well, certainly; when there was no work I wasn't employed.

BY MR. DONOHUE:

Q Didn't you just tell his Honor that by steady employment you mean six days a week? A Not steady. If I had no work for a day or two I peddled.

Q Well, you didn't peddle during July, August and September, did you? A No, sir.

Q And you only peddled three days in the month of October, before you were arrested? A Yes.

Q And one of the days happened to be a day you were in the Magistrates' Court as a witness? A No, I didn't peddle that day. I went to buy stuff, but I didn't peddle.

Q Well, why didn't you go to work that day? A Well, I went down to buy stuff, and I couldn't buy any stuff.

Q Well, why didn't you go to your steady job? Had you given it up? A No, because it was slow.

BY THE COURT:

Q What work did you do for Birnbaum? A Shipping clerk; but he didn't have no work in October, on account of the shipping strike -- no, it wasn't on account of the strike, but he didn't have no work.

Q When were you laid off before the 22nd of October?

A When he had work he would let me know when to come up.

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Q (Repeated.) A The first of October.
month

Q So that during the 1st/of October you didn't work at all
for Birnbaum? A No, sir.

BY MR. DONOHUE:

Q And also during that month you only peddled three days,
you said before? A Yes, sir.

Q What were you doing the rest of the time? A I don't know
what you mean.

Q You told his Honor before that you were laid off on
October 1st? A Yes, sir.

Q Now, is that so or not? A Yes, sir.

Q You told me before that you only peddled three days the
month of October? A I did.

Q And what were you doing for the other 19 days? A I was
working at moving pictures.

Q Oh, doing what there? A Usher.

Q Where? A The Odeon Theatre.

Q How do you spell that? A O-d-e-o-n.

Q Where is that? A 58 Clinton Street.

Q Who owns that place? A The M. & S. Corporation.

Q Who is the M & S Corporation composed of? A Meyer and
Schneider. That's the corporation.

Q Who else owns that theatre, besides those men? A I don't
know.

Q Is your brother one of the owners? A No, sir.

Q Or is any other member of your family? A No, sir.

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Q How did you come to go to work over there? A Well, it's across the street from my home, and I happen to know the bosses.

Q And where -- when did you go to work there? A Any time he needed a man, he took me on.

Q When did you go to work there? A The 1st of October -- no, the 2nd of October.

Q Which is it? A The 2nd.

Q And did you work there on the 2nd? A I did.

Q Doing what? A As an usher.

Q Did you work there on the 3rd? A I did.

Q The 4th? A I did.

Q The 5th and 6th? A Yes, sir.

Q And for the rest of the month until the 22nd? A No, sir; up to about the 20th -- the 20th.

Q Why did you stop working there on October 20th? A The man that I took his place was sick, and he come back.

Q What was the man's name? A Mr. Pherley.

Q Did you call him Mr. Phorley? A I think that was his name. I'm not sure.

Q Was he an usher? A Yes.

Q Well, what did you call him? A I used to call him Phorley, but I didn't know what his name was.

Q How long did he work there? A I don't know.

Q How long had you known him? A The time I was working there, a couple of days before he got sick.

Q Did you know that he was going to report sick? A He

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told me he is sick and expects to stop work for a while and told me to ask the boss and he would put me on him his place.

Q And you did ask the boss? A Yes.

Q And what date was that, that you asked the boss? A On the second.

Q Didn't you say that you knew him a couple of days before you went to work? A I asked him on October 2nd for the job, to put me on.

Q But did you ask him on the 2nd, or a couple of days before that? A On the 2nd.

Q And was the man sick at that time? A He was going to goaway that day.

Q And you only asked on that day, although you knew he was going away, because he was sick? A I didn't know he was going to be sick. He said he wasn't feeling well.

Q How big is that theatre? A Oh, a thousand seats.

Q And did they have all men ushers, or did they have girls as ushers? A Men ushers.

Q Do you wear a uniform there? A No, sir.

Q As an usher? A No, sir.

Q Did your friend, Mr. Phlrey, wear a uniform? A No, sir.

Q What did you do on the 20th, when you didn't work there?
I might have gone

A I don't remember. ~~I was going~~/to a show.

Q Well, but you might have gone pedling, or marketing, and you might not? A No, I didn't.

Q On what day was the 20th? Was it not on Friday?

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A (No answer.)

Q Do you remember what day the 20th was on? A No, sir.

Q Do you remember what you did on the 20th? A No, sir.

Q You say you stopped work on the 20th? A Yes.

Q You didn't do anything that day at all? A No.

Q Now, do you remember what you did on the 21st? A The 21st?

Q Yes? A I think it is on a Friday, and I was peddling.

Q You peddling, that day? A Yes, sir.

Q Now, what did you do on the 22nd? A I think that was a holiday.

Q No. The 22nd was not a holiday. The 24th or 23rd was a holiday. A Well, it was two of those days before this was a holiday.

Q Now, what were you doing on Saturday? A I was peddling at 42nd Street and Ninth Avenue.

Q What did you ^{pay for} ~~peddle~~/your oranges for that day? A Three dollars.

Q And the very next day they were \$4.50 a box? A Yes, and sometimes they were raised more than \$3 a box.

BY THE COURT:

Q How many days altogether in October did you peddle oranges?

A How many days?

Q Yes. A Two days, Friday and Saturday.

Q And before that you had not bought oranges for several months, had you? A No, sir.

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Q So that all you know about the price of organges at that time of the year was the price that you bought them for, for two days? A Yes, sir.

Q And who did you buy them from on those two days? A Well, a produce dealer.

Q Give us the name. A Joe Rosenberg.

Q Is that in Washington Market? A No, over in the Attorney Street market.

Q Joe Rosenberg's store is in Attorney Street? A Yes, sir.

Q That is on the east side? A Yes, sir.

Q And on both the days that you bought oranges, did you buy them over at Attorney Street? A Yes, sir.

Q Then this day that you went over to Washington Market is the first day you had tried to buy oranges away over on the west side; was it not? A No, I always bought stuff there; and when I seen the stuff was high there, I would jump over to the Attorney Street Market.

Q But did you do that on the day of your arrest? A I done it on Saturday.

Q (Repeated.) A What's that?

Q Did you jump over from Washington Market, West Washington Market, to the Attorney Street Market, after you found the prices were too high at Washington Market? A No, I was on my way home that day.

BY MR. DONOHUE:

Q You had decided to abandon the pedling business for that

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day? A I had not -- yes, for that day.

MR. DONOHUE: That is all.

MR. ROSENBERG: That is all.

THE COURT: Now, gentlemen, we will take a recess until tomorrow morning at 10:45 o'clock. Be in your seats, please at a quarter to 11 o'clock.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Tuesday morning, December 13th, 1921, at ten-forty-five o'clock.)

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New York, December 13th, 1931.

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TRIAL RESUMED:

S I M O N A X L E R, his cross examination being continued,
testified as follows:

BY MR. DONOHUE:

Q Now, yesterday, Axler, you told me that you worked for
the Odeon Theatre, on October 1st and 2nd, and up to and including
October 19th, of this year? A Yes.

Q Do you still insist upon that? A Yes, sir.

Q Did you ever see this gentleman before (indicating)? A Yes.

Q Do you recognize him? A Yes.

MR. DONOHUE: It is Mr. Sadowsky.

Q Now, do you know who this gentleman is? A I do.

Q And what is his name? A Mr. Sadowsky.

Q And he is the manager of the Odeon Theatre, is he not?

A Yes.

Q And was he at the theatre while you were working there?

A No, sir.

Q You were there during the month of October, you say? A Yes.

Q You started on the 2nd and ended on the 19th? A Yes, sir.

Q Acting as usher? A Yes, sir.

Q And you were there every night? A Yes, sir.

Q And wasn't this man there (indicating Mr. Sadowsky)?

A I didn't see him.

Q Don't you know that this man is the manager of that
theatre, and has been there for ten years? A I've seen him

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around there but I didn't know he was the manager.

Q Were you working there while he was there? A Yes, sir.

Q Acting as manager? A I didn't know he was the manager.

Q How long did you work there? A From the time I told you.

Q From the 2nd to the 19th? A Yes, sir.

Q But you didn't know who the manager was? A No, sir.

Q But you saw this man around there? A Yes, sir.

Q Now, you also told you, yesterday, that you worked for Mr. Birnbaum, of 21 West 21st? A 31 West 21st.

MR. DONOHUE: Mr. Birnbaum, will you stand up, please?

Q And you also said that Mr. Birnbaum was no relative of yours, is that right? A (No answer.)

Q Didn't you say that yesterday? A I don't remember whether I did or not.

Q Didn't you say yesterday that he was not a relative of yours? A I don't remember whether I did or not.

Q Is he related to you? A Yes.

Q What relation is he of yours? A My brother in law.

Q And the firm is Birnbaum & Axler, is it not? A Yes, sir.

Q And who is the Axler in that firm? A A brother of mine.

Q And you saw that you worked for that firm? A Yes, sir.

Q When did you work for that firm? A When did I work for them?

Q Yes. A A couple of years ago.

Q A couple of years ago? A Yes, sir.

Q But don't you remember telling us yesterday when you

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worked for them? A I told you quite some time ago.

Q And what is your best recollection of what you said yesterday? A Two years ago.

Q And didn't you say yesterday that you worked for two years steadily up to October 2nd, when you were laid off because there was no work for you to do? A I don't remember whether I did or not.

THE COURT: Wait a moment.

BY THE COURT:

Q Didn't you tell me that you worked for two years, up to October this year; don't you remember me asking you something about that? A Yes, sir; and I said -- the District Attorney just asked me if I worked there steady.

Q Didn't you tell me that you worked there continuously for two years and that the only peddling you did was about two days before the date mentioned in this indictment? A I don't remember telling you that.

THE COURT: Well, maybe you did not. Proceed.

BY MR. DONOHUE:

Q Don't you remember his Honor asking you whether you worked steadily, and you said yes, just twice a week? A No, I didn't.

Q Now, when did you work for Birnbaum & Axler? A In 1919, I started to work for them.

Q In 1919? A Yes, sir.

Q And when did you finish? A Last June.

Q Last June? A Working on and off.

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Q Mostly off, was it not? A Yes.

Q What did you do between June and October then? A What I done there?

Q Yes. A Peddled a little.

Q Don't you remember telling his Honor yesterday that you didn't do any peddling in July, August and September, and only peddled three days in October? A I don't remember telling him that..

Q But is that the fact? Didn't you peddle in the months of June and July? A Not every day. When I had stuff I went out and peddled it.

MR. DONOHUE: That is all.

MR. ROSENBERG: That is all.

ISIDOR FRIEDMAN, being recalled for further cross examination, testified (through the Official Interpreter, Mr. Landau) as follows:

CROSS EXAMINATION (Continued) BY MR. ROSENBERG:

Q Now, Friedman, will you tell the location, the exact location of the stairs with respect to the hallway? How far did you have to walk back from the hallway to come to the stairs? A About five or six feet.

Q Now, are the stairs enclosed, or are they all open, so that you can see a person walking up? A Yes, if you walk up, one can see you.

Q Yes, when you are in the hallway one can see you; is that

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what you mean? A Sure, yes.

Q Now, how far is the entrance to your loft, on the fourth floor, from the front of the building? A I don't quite understand what you mean by that.

Q Well, when you get on the fourth floor, where your loft is, how far do you have to walk to reach the entrance to your loft? A About four feet.

Q And how far is the entrance to your shop or loft from the front window, facing on 27th Street? A Also about six feet.

Q And how high is the ceiling from the floor, on the fourth floor, in the loft? A It is a low ceiling. It isn't tall, it isn't high.

Q Can you tell the jury about how high it is? A Well, from the floor a little above the two lights here (indicating the side lights of the courtroom).

MR. ROSENBERG: Would you make it ten or eleven feet?

MR. DONOHUE: Whatever you like about that. Let the Foreman say.

THE COURT: Mr. Foreman, will you stand up, please, turn around and look at the height between the foot of the baseboard, the floor, and that electric light, and give us your best estimate of what that is.

THE FOREMAN: Ten feet.

MR. ROSENBERG: We all agree it is ten feet, then?

Q And is the hallway on the fourth floor the same height?

A Sure, the same.

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Q Now, then, how far -- is there a closet, a water closet, between the hallway -- between the stairs and the window in the hallway on the fourth floor? A From the fire escape there is a toilet, and from the toilet you can enter the shop.

Q And is the toilet between the front of the house and the stairs? A Yes, in the middle.

Q Now then, how far -- oh, you still insist that there were three coats missing? A Yes, three coats are missing.

Q Well, who did you get the other property from, the police? A Yes, sir; from Headquarters.

MR. ROSENBERG: That is all.

A B R A H A M A X L E R, of 66 Clinton Street, one of the defendants, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q How old are you, Axler? A Going on 21.

Q Talk loud, so that the last juror can hear you. A Going on 21.

Q Now, you are charged with having burglarized these premises, 166 West 27th Street, on the 24th day of October of this year. Were you concerned in that burglary in any way? A No, sir.

Q Were you in the premises on that day or any other day? A No, sir.

Q Or that evening? A No, sir.

Q Were you in the automobile with Blume, as described by the

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officers here, yesterday? A No, sir.

Q Were you on 23rd Street, with your codefendant and the other persons mentioned here? A No, sir.

Q Were you on 27th Street, and spoke to the chauffeur?
A No, sir.

Q Or on 28th Street and 27th Street and Seventh Avenue, and spoke to the chauffeur Blume? A No, sir.

Q Do you know Rosenberg or Fershing? A No, sir.

Q Did you commit the burglary or larceny referred to here?
A No, sir.

Q With them or either of them? A No, sir.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. DONOHUE:

Q What do you do for a living? A I am an assistant cutter.

Q Who do you work for? A L. Weiner.

Q And where is that? A 11 West 17th.

Q And how long have you lived in 63 Clinton Street?

A 18 years.

Q Were you a relative of Simon Axler? A Yes.

Q What relation are you? A Cousin.

Q Cousin? A Yes.

Q Do you know Mr. Birnbaum? A Who?

Q Mr. Birnbaum? A Yes.

Q What relation is he to you? A I don't know, - some cousin,
I believe.

Q Isn't he your brother in law? A No, sir.

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7 Q He is a brother in law of Simon? A My father and his brother are brothers.

Q Who father? A Simon's father.

Q Now, where were you on this day? A On what day?

BY THE COURT:

Q What day do you think we are talking about here? A I don't know, your Honor.

THE COURT: Give him the day and the date and the time.

BY MR. DONOHUE:

Q Where were you about six o'clock on the afternoon of October 24th? A I was around Clinton Street, that time.

Q You were around Clinton Street? A Yes.

Q And where were you working at that time? A For L. Weiner.

Q And what kind of work did you do? A Assistant cutter.

Q Assistant cutter? A Yes, sir.

Q And what time did you get off from work? A Five o'clock.

Q And were you off at five o'clock that day? A Yes, sir.

Q Did you go to work on October 25th? A I didn't work that day.

Q Why didn't you work on the 25th? A I didn't feel like going to work. I took off that day.

Q Because you were tired? A No, I didn't feel like working.

Q Why not? A Because I wanted to take a day off.

Q Well, was there work for you to do? A I don't know.

Q You didn't go over to the shop? A No, sir.

Q Then that happened to you often, that you don't go to

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work? A Well, there wasn't very much work. I took the day off because I didn't want to go to work.

Q You didn't feel like going to work? A No, sir.

Q You hadn't been out late the night before, had you? A Until half past ten.

Q Well, that is not unusual with you, is it? A No, sir; I usually go to bed about half past ten.

Q And when did you wake up on that morning? A Nine o'clock.

Q And what did you do when you woke up? A I dressed myself and went downstairs.

Q You dressed yourself and went downstairs? A Yes.

Q About what time did you get downstairs? A About half past nine.

Q And where did you go? A I was in front of my house.

Q Just standing there? A Yes.

Q Who were you talking to? A Myself.

Q Talking to yourself? A Yes.

Q And how long did you keep on talking to yourself? A About half an hour.

Q And then it was about ten o'clock when you stopped talking to yourself? A Yes, sir.

Q Where did you go then? A I didn't go anywhere.

Q Well, what did you do? A About 11 o'clock I went over to the Odeon Theatre, to see the pictures.

Q Well, weren't you arrested in the Magistrates' Court on that day? A I don't know what day you are speaking of. You

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said the 25th.

Q The 25th of October, the day you were arrested. A I was arrested on the 24th.

Q Why, weren't you arrested in the Magistrates' Court on the 25th? A I don't recollect what day I was arrested.

THE COURT: Just a minute.

BY THE COURT:

Q Well, if you don't recollect, don't say positively and definitely that you were arrested on a certain day. A Well, I don't recollect now.

THE COURT: Well, then, say that you do not recollect.

BY MR. DONOHUE:

Q Is that your signature (indicating the Magistrates' Court papers)? A Yes, sir.

Q Now, does that refresh your recollection as to the day you were arrested? A Yes, sir.

Q Now, when were you arrested? A I was arrested on the 25th. I didn't know what you were talking about.

Q Well, that's the day you have been telling me about, is it not? You got up at nine o'clock and stood talking to yourself for half an hour or so, at the street door, is it not? So you have been talking about the 24th? A Yes, sir; I didn't go to work on Sunday, but on Monday I did go to work. That was the 25th.

Q Now, I will look at the calendar and show it to you. The 25th of October was on Tuesday. A Monday or Tuesday.

Q Wait a minute, please. And the 24th was on a Monday. Now,

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did you go to work on the 24th? A The 24th I went to work.

Q The 24th you went to work? A Yes.

Q Now, you came home from work at what time? A At five o'clock.

Q And where did you go then? A Went up to the house and ate supper, and went downstairs and went into the pictures.

Q What time did you get out of the pictures? A About half past seven.

Q And then where did you go? A I stood around the block.

Q Yes. A And I went to sleep.

Q Now, did you hear Simon say yesterday that on the 24th you and he met a girl outside of his door, and you took a ride in a bus? A Yes.

Q Is that true? A Yes.

Q Then you didn't go into the moving pictures at half past seven? A Well, I went in to the theatre and he called me out again.

Q So that when you said you went to the moving pictures and saw the show, and went home and went to bed, you were wrong?

A No, you didn't ask me that question.

Q What time did you go into the moving pictures? A I don't know; I can't recollect.

Q Was it before six o'clock? A I don't know.

Q Was it before five o'clock? A I don't know.

Q You left work at five o'clock, didn't you? A Yes, sir.

Q What time did you get home? A Half past five.

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Q And how long did you stay in the house? A About half an hour.

Q And where did you go next, at six o'clock? A To the pictures.

Q Did Simon know where you were going? A He did, because I left word with the candy store man where I was going, the moving pictures, and he came and found out where I was.

Q Did he have the girl with him when you met him? A Yes, he had the girl and he called for me.

Q What did he say? A He said he was taking a bus ride.

Q And wanted you to go with him? A Yes.

Q Did you go? A Yes.

Q Where did you get on the bus? A Washington Square.

Q How did you get over there? A Walked over.

Q How did you walk over? A With my feet.

Q But through what streets? A I don't remember what streets I walked through.

Q You have no idea? A No, sir.

Q Did you walk with the girl? A I walked with the girl and he walked.

Q Do you remember what side of the girl you walked? A I don't know. I guess the left hand side.

Q But you walked over? A Yes.

Q And got on the bus? A Yes, sir.

Q What time? A About half past seven or a quarter to eight.

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Q Where did you go on the bus? A To 155th Street and St. Nicholas Avenue.

Q And I suppose you went across 59th Street to Riverside Drive, too? A I wasn't interested in the streets.

Q You were interested in Mary, the girl, I suppose? A Yes.

Q Where did you go at 155th Street? A Went to a restaurant there.

Q On what side of the avenue? A Right hand side, between 155th and 156th Streets.

Q And, after you had something to eat in this restaurant, where did you go? A Went home.

BY THE COURT:

Q When you say the right hand side, which side do you mean? Going up town? A Yes.

Q That is what side of the avenue? That is on the east side of St. Nicholas Avenue, is it not? A It is on the west side.

Q Are you speaking now of a restaurant on the right hand side of St. Nicholas Avenue? A Yes.

Q Now, if you were walking up St. Nicholas Avenue, wouldn't it be the east side of the avenue that you would have on your right hand side? A Yes, sir.

Q And then you say it was the easterly side of St. Nicholas Avenue that you are now talking about? A Yes, sir.

BY MR. DONOHUE:

Q Now, after you had something to eat, did you get back on

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the bus again? A Yes, sir.

Q And ride down to where? A To Washington Square.

Q And then you went home? A No; first we took the girl over to the subway.

Q What time did you get home? A I don't know what time; I didn't have no watch.

Q About what time? You don't mind my asking you these questions, do you? A No, sir.

Q What time did you get home? A Around, near ten o'clock.

Q And you went to bed, didn't you? A Well, first I went home from the subway, then I went to bed.

Q And you got to bed about ten o'clock? A Yes, sir.

Q And that is your usual hour for going to bed? You are usually in bed at ten o'clock? A No, sir; ten or half past ten, or eleven, any time I feel like going to bed.

Q But you go to bed usually very early, don't you? A Sometimes.

Q And the next morning you woke up and felt tired, and didn't want to go to work? A No, sir.

Q And there was no reason for it at all, was there? A Well, it was slow in my line of business, and I thought I would take a day off.

Q Well, didn't you say just now that you did not take off the day because it was slow, but because you wanted to take a day off? A No, sir; I don't think so. I don't remember saying that.

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Q Was there any work there at the shop? A No, sir.

Q Didn't you say that you stayed off because you wanted to stay off, but there was plenty of work? A Yes, I think so. But there was no work.

Q And that's the reason why you stayed off then? A Yes.

Q And you say you got up at nine o'clock, is that right?

A I don't recollect what time I got up.

BY THE COURT:

Q Didn't you say you got up at nine o'clock? A Well, before, I did say that; but I don't recollect what time I got up.

Q And now your answer is that you don't know whether you got up at nine o'clock or not? A No, sir.

BY MR. DONOHUE:

Q Well, was it ten o'clock? A I don't know.

Q Can't you give us any idea of what time you got up?

A No, sir.

Q Well, what did you do after you got up? A Well, the day before I was arrested --

Q No, I don't care about that/all. I am speaking of the day ^{at} you were arrested. A The day I was arrested, he sent me down to the market.

Q Now, please wait a moment. Do you remember the day before you were arrested? A Yes, sir.

Q You told me you remembered it well. A Yes.

Q What time did you get up in the morning, that day? A I don't remember; whether it was five, or six or nine o'clock.

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Q Is that the day you decided not to go to work? A Yes, sir.

Q And did you tell Simon that you would not go to work the night before? A Yes.

Q And you agreed to get up at five o'clock? A Yes.

Q Well, that was a most unusual hour for you to get up, wasn't it? A Well, I don't know. Sometimes I get up earlier than that.

Q But not when you were working for Mr. Weiner? A No, sir; I get up at seven o'clock when I am working for him.

Q Why did you get up so early then? A Because he said I was going to market with him and he would give me a chance to make a few dollars.

Q How much did you get, how much salary do you get, in your employment with Mr. Weiner? A \$35 a week.

Q And yet you wanted to go out peddling oranges? A Well, I wanted to have a day out with my cousin. I wanted to be out in the air, I'm all the week in the shop.

Q And that was the first time you had ever done anything like that? A Yes.

Q You never peddled with him before? A I peddled a long time before, before I got the job.

Q Well, did you ever peddle with him? A Yes, three or four years ago.

Q Did you have a license? A No, sir.

Q How did you peddle then? A On his license.

Q He had a license four years ago? A Yes, sir.

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Q He was 15 years of age four years ago. A I really don't know how old he was.

Q Why, weren't you and Simon born in the one house? A No, sir.

Q Well, right next to each other? A No, sir.

Q Well, how long do you live right next door to him? A A couple of years.

Q Why, in the Magistrates' Court, didn't you say that you lived at 63 Clinton Street for 19 years? A Well, I admitted that; didn't I?

Q And didn't you hear Simon say that he lived next door, at 61, for 19 years? A I didn't hear him say that.

Q Do you recognize his signature on this paper (indicating Magistrates' Court papers)? A Yes, sir.

Q Where he says that? A Yes.

Q And so that on this particular night you decided to go out in the morning to peddle oranges, to get the air, though you had a job to go to? A Yes.

Q Now, what time did you get up? A Five or six o'clock, I don't remember.

Q Haven't you any idea? A No, sir.

Q It wasn't as late as seven o'clock? A I don't think it was.

Q You think it was between five and six? A Yes, sir.

Q And when you woke up where did you go? A We went over to Washington Market.

Q But where did you go immediately after you got up?

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A I went up to his house.

Q Did you call him? A No, he was up and dressed, waiting for me.

Q Did you see his mother give him \$100? A I didn't see nothing.

Q Did you know whether he had any money or not? A No, sir.

Q Did you have any money? A No, sir.

Q Not a nickel? A Not a nickel.

Q And you just got up to go over there to help him? A Yes.

Q And how long did you stay in Washington Market? A About two hours, I guess.

Q Doing what? A Walking around, trying to buy stuff.

Q And I suppose you were feeling the oranges and pricing them? A I didn't do nothing.

Q But you saw him doing that, didn't you? A Yes.

Q How long were you doing that? A About two hours and a half.

Q Did you see a clock over there? A No, sir.

Q Well, how do you know how long it took you? A About that. I didn't see no clock.

Q And during the two hours and a half Simon was going around pricing the oranges? A Yes, sir.

Q And it was about eight o'clock when you got through?
A About half past seven or quarter to eight, I think.

Q What time did you leave the market? A About half past seven. I didn't have no watch to look at.

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Q And where did you go then? A From there we went straight down Tenth Street.

Q And did you stop at all between the time you went to the market and the time you arrived at Tenth Street, or did you keep on walking? A Just went in for coffee.

Q How long did that take you? A About half an hour or three quarters of an hour.

Q And what time did you arrive at Tenth Street? A I don't know.

Q You have no idea? A No, sir.

Q What part of Tenth Street did you arrive at? A Tenth Street and Sixth Avenue.

Q And where did you go then? A We went into the courtroom to hear some cases.

Q Well, you were busy that day? A I wasn't busy that day.

Q I mean, you had a job to go to? A I didn't go to work that day.

Q Well, when you found there were no oranges to be purchased, to be sold again, and you found that you couldn't spend the day in the open air, why didn't you go to work? A Well, I figured it was too late when I got to the court house.

Q Well, why didn't you go direct from the market? A I didn't feel like it. I figured I would take off one day.

Q You figured you would take off one day? A Yes.

Q You had no money? A No, sir.

Q You needed money very badly, didn't you? A Oh, I can

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get money.

Q (Question repeated.) A I didn't need no money.

Q You didn't need any? A No, sir.

Q And at half past seven you decided that you would not go to work because you didn't feel like it? A No, sir.

Q You could have gone to work if you had wanted to? A Yes.

Q But you decided to go around to the Magistrates' Court to see what was going on? A Well, I suggested it. We wanted to waste some time.

Q Had you ever been there before? A A few times.

Q When were you there the last time? A In 1920.

Q Were you in the habit of going into these courts and watching what was going on? A No, sir.

Q Why did you go in, this morning? A Because it was too early to stand around the block, and I decided not to go to work.

Q I thought you wanted to stay out for fresh air? I understood you to say that you stayed off from your regular job because you wanted to get some fresh air. A Yes, because I was indoors all the week.

Q Then why did you go to the Magistrates' Court at nine o'clock, when you wanted fresh air? A Well, I had all the day before me, didn't I?

Q Well, it was crowded, was it not? the Magistrates' Court? A I don't know, I got a seat.

Q Well, wasn't it crowded? A Well, I didn't look around to see if it was crowded or not. There was people in the

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courtroom.

Q Is this courtroom crowded now? A No, sir.

Q Were there as many people over there that morning as there are here now? A Well, I couldn't say. That courtroom is smaller than this.

Q You were not interested, by any chance, in Mr. Isidor Rosenberg; were you? A No, sir.

Q He lives at 189 Clinton Street; didn't you know that?
A No, sir.

Q You were not interested in him at all? A No, sir.

Q And you were not interested in Morris Fershing, who lives right around the corner from you, at 89 Avenue C? A No, sir.

MR. ROSENBERG: I object to that question, because the District Attorney assumes something in his question, something that has not been proven.

THE COURT: Objection sustained.

BY MR. DONOHUE:

Q Where is 89 Avenue C? A Around Sixth or Seventh Street.

Q How far from where you live? A About 7 or 8 blocks.

Q How far is 68 St. Marks Place from where you live? A About ten blocks.

Q And you were not interested in any of those men, by any chance? A No, sir.

Q And how long did you intend to stay in the court? A About an hour, or perhaps until eleven o'clock, and then I would go to the pictures.

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Q Well, you wanted to get the air this day, as I understand. Why did you remain in the crowded courtroom and intend to go to a moving picture show? Why didn't you stay out in the open air?

A Well, I felt just like doing that.

Q You hadn't taken a day off for some time, had you?

A I have Sunday off all the time.

Q Were you ever off any other day than Sunday, during the year before? A I can't remember.

Q And yet you took this day off to get the air? A Yes, sir.

Q But you decided to see the pictures? A Well, I didn't know whether I would go or not.

Q At any rate, you were in the Magistrates' Court for about two hours, weren't you? A Yes.

Q Were you both arrested together, you two men? A Yes. And I asked the officer what he arrested me for.

Q You were quite surprised? A Yes.

Q It made quite an impression on your mind, didn't it, to be arrested? A Yes, sir.

Q Still a little while ago you couldn't tell us on what day it was? A Because I didn't know what day you were talking of.

Q How old are you? A 21.

Q Have you ever been convicted of a crime? A No, sir.

Q Aren't you on parole now? A No, sir.

Q Never have been convicted before? A No, sir.

MR. DONOHUE That is all.

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Q Did you make a confession to officer Hoffman that you were in the 27th Street building, and you got away because you were scared? A No, sir.

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

Q Did you tell him that you were guilty of the crime charged against you here? A No, sir.

Q You heard him testify here yesterday to that effect?
A Yes.

Q Did you make the statement he gave here yesterday, or anything to that effect? A No, sir.

Q Now, the District Attorney you about one occasion when you said you were talking to yourself about half an hour. Did you understand what you were saying? A Yes.

Q Well, were you talking to yourself? A Well, if I was standing alone I couldn't be talking to nobody, could I?

Q Well, but you told the District Attorney and these jury men that you were talking to yourself for about half an hour.

A It was a foolish question to ask me, when I wasn't talking to nobody.

Q Well, were you talking to yourself? A No, sir.

RECROSS EXAMINATION BY MR. DONOHUE:

Q Now, do you want me to understand that you were working for L. Weiner -- A Yes.

Q One moment, please. -- and that you worked for him on October 24th? Now, think that over carefully. Did you work

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for Weiner on October 24th, the day before you were arrested?

A Yes.

Q Now, are you sure? A Yes.

Q Now, as matter of fact, did you ^{not} leave Weiner over a year ago? A I never left Weiner.

Q Wait a minute. Weren't you discharged by Weiner over a year ago? A No, sir.

Q Now, think it over very carefully. When was the last time you worked for Weiner? A One day before I was arrested.

Q What day was it? A The 24th.

Q You worked on the 24th? A Yes, sir; until the 24th.

Q That was on a Monday? A Yes.

Q Did you work for him the Saturday before? A Yes.

Q And the Friday before that? A Yes.

Q And ever day for two years before that? A Yes.

Q Are you sure of that? A Yes.

Q Now, as matter of fact, weren't you discharged, two years ago, and you haven't been working there since? A No, sir.

Q What work did you do there? A Assistant cutter.

Q And what was your salary? A \$35 a week.

Q And were you paid \$35 for every week for the last two years, up to October 24th? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q Where did you work before that? A For M. Fisher.

MR. DONOHUE: May I suspend the cross examination here, your Honor, and may I recall the witness for further

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cross examination, when I receive some additional information that I expect to receive, and which is being procured for me?

THE COURT: Yes.

MR. DONOHUE: Then that is all now. But I would like to recall him later.

BY MR. ROSENBERG:

Q Now, do you want to correct your testimony concerning your employment at Weiner's place? A I was working there until the 24th.

Q Now, were you working there all the time? A Yes.

Q For two years? A Yes.

Q Or only off and on? A For two years.

Q Now, are you sure of that? A Yes.

Q Or are you mistaken? A I ain't mistaken.

MR. ROSENBERG: All right. That's all.

ISIDOR ROSENBERG, of 189 Clinton Street,
a witness called on behalf of the defense, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Rosenberg, are you related in any way to these defendants?

A No, sir.

Q Or to counsel in the case? A What's that, sir?

Q Are you related to anybody here? A No, sir.

Q You are not related to me, are you? A No, sir.

Q You happen to have my name, that's all? A Yes.

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Q On what tier are you in the Tombs? A Cell 430, fourth tier.

Q Now, do you know either of these men on trial here?

A No, sir.

Q Now, you are charged with the burglary in the premises 166 West 27th Street, the particular premises of Mr. Friedman, where a quantity of furs were stolen, is that correct? You are charged with that crime? A Yes, sir.

Q And you have pleaded guilty, is that correct? A Yes, sir.

Q Now, were these defendants with you at the time you committed that crime? A No, sir.

Q Were either of them with you? A No, sir.

Q Do you know these defendants, or either of them? A No, sir.

Q Are you sure of that, Rosenberg? A Yes, sir.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. DONOHUE:

Q How long have you lived at 189 Clinton Street? A In the last five years.

Q You know these defendants, don't you? A No, sir.

Q Now, didn't you tell me yesterday -- A I didn't tell you anything.

Q -- that if you saw your lawyer you might tell me the truth about this thing? A No, sir.

Q What did you tell me on that subject? A I didn't tell you nothing. You asked me if I knew these men and I said I didn't know them at all.

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Q Didn't you say you wanted time to talk to your lawyer?

A No, sir.

Q What did you say about your lawyer? A I didn't say anything about my lawyer at all.

Q You didn't mention your lawyer's name to me? A No, sir.

Q And you didn't ask me to wait, to give you time to talk to your lawyer, and you would tell me the truth in this case?

A No, sir.

Q And you didn't say anything like that? A No, sir.

Q How old are you? A 26.

Q And you have been convicted a couple of times before, haven't you? A Once, for unlawful entry.

Q Now, think. How many times have you been convicted of crime? A I was in the House of Refuge when a child.

Q (Repeated.) A Twice.

Q Twice? A Yes, sir.

Q There is no question but that you committed the burglary in this case? A Yes, I did it.

Q And this instrument, People's Exhibit 1, belongs to you?

A It don't belong to me, but to another man, Max Schwartz. The other gentleman had that.

Q The other gentleman had it? A Yes.

Q And you mean Mr. Fersling? A (No answer.)

Q Who had this instrument? A Max Schwartz had it.

Q Who is he? A I met him over at the Academy of Music, the same afternoon, and he asked me to take a walk with him.

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Q And is he known also as Morris Fershing? A Well, he knows him.

Q Is he a friend of yours? A No, sir; I met him just lately.

Q Didn't you know that he had been in Sing Sing many, many times? A No, sir.

Q Why, didn't you know that he was convicted four times of crime? A No, sir.

Q Didn't you know that his name was also Murray? A Yes, sir.

Q And also Schwartz? A No, sir.

Q Why, didn't you call him Schwartz just now? A No, there was another man by the name of Max Schwartz.

Q When was this burglary arranged? A Well, I was just taking a walk.

Q And you were an innocent person and were induced to commit this burglary? A No, sir.

Q When were you first told about this burglary? A We met Max Schwartz at the Academy of Music, and it was about 2:30 in the afternoon, and we were going to the pictures.

Q Now, you say "we". Who was with you? A Me and Fershing.

Q And up to that time the burglary was not suggested to you? A It wasn't suggested to me at all then, no.

Q Up to the time you went to the moving picture house, at half past two, did you have any intention of committing a burglary? A No, sir. We met Max Schwartz, me and Fershing. We were just about to go in, about 2:30 in the afternoon.

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Q And what did Schwartz say to you and Pershing? A He asked us to take a sociable walk. He didn't say anything about any burglary at all.

Q And you started to go for a sociable walk? A Well, Schwartz suggested taking a little sociable walk.

Q And where did you go? A And we walked up Broadway as far as 27th Street.

Q I see. A And then he suggested to walk over west, as far as the Pennsylvania Railroad tunnel; and he got as far as Seventh Avenue and told us to wait on the corner, and we did. And he said he wanted to see some girls, that he wanted to take home that evening; and, about 15 minutes after he came down and asked us to walk over to 23rd Street and Fifth Avenue; and we sit in the Park there until about ten after four. And then he asked us to go over to the cigar store at 23rd Street and Fifth Avenue, and wait for him, and we waited there 15 minutes; and then he suggested to take a taxi down, and, finally, we seen an automobile coming west through 23rd Street, and he halted the machine. --
BY THE COURT:

Q Was it a taxicab? A No, sir; he halted a touring car, and he happened to jump on it, - he knew the fellow, - and he didn't stop a minute, and he went through toe 23rd Street, between Fourth and Broadway, and he stopped in the middle of the block, and he asked us to have a little ride with him and we got in a machine; and at 14th Street and Third Avenue the machine halted there, and he went away, and he come back with a package. That

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was about five o'clock. And then we had a ride uptown, which I don't know where he was going, and then we come as far as 27th Street, and he went up for about 15 minutes in the loft, and I thought he was going to get some girl; and then he had something for us, Fershing and me, to take out from the hall and put in the machine. And then he said we should meet him at 14th Street and Third Avenue. That's all I know about it.

Q Go ahead. A As soon as we got the two bags from the hallway into the car, he said he would meet us there.

Q Go ahead. A That's all, sir.

Q Well, up until this time you didn't know there was going to be a burglary? A No, sir.

Q And you didn't know there was one? A No, sir.

Q Well, why did you plead guilty? A Well, naturally, when I seen I was in the automobile where the furs were, I figured I must be guilty, because it must be stolen material, but I didn't realize that at first.

BY THE COURT:

Q What did you plead guilty to? A Attempted burglary in the third degree.

BY MR. DONOHUE:

Q You had no idea that the burglary was committed in this place at all? A No, sir.

Q The first you knew that a burglary had been committed was when the officers jumped on the car and charged you with it?

A Yes.

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Q And you don't recognize this instrument at all, People's Exhibit 1, this jimmy? A No, sir.

Q Did you see the police officers pick it up in the car?

A No, sir; it was wrapped up. So far as I know, it was wrapped in a package, but I didn't know what the package contained.

Q Well, how do you know what was in the package if you didn't open the package? A No, sir; I didn't examine it at all. The officer walked with it in his hand. I never knew it was in the package.

Q How long have you known Fershing? A About four weeks ago, I was introduced to him by a friend of mine at Delancey and Allen Street.

Q And do you say now that you had no idea that a burglary was being committed? A Yes.

Q And the car went down 23rd Street and Third Avenue? A Yes.

Q And where did you go then? A West side.

Q And did it go back to 27th Street? A No, sir; it stopped at 14th Street and Third Avenue, afterwards.

Q Well, some time after that you went back to 27th Street? A Yes, about 15 or 20 minutes. He suggested going to take a ride uptown.

Q And didn't the car go around the block? A No, sir; it was in about the middle of the block.

Q And what were you doing at that time? A Sitting in the machine.

Q Who went up in the building? A Max Schwartz.

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Q Who went up with him? A He went up all alone.

Q Didn't Fershing go up with him? A No, sir; he didn't.

Q What tier did you say you were on in the City Prison?

A Fourth tier.

Q And on what tier are these defendants? A The same tier.

Q And didn't you and these defendants get together, and didn't you agree to take the blame of the situation because you had a criminal record? A No, sir.

Q Didn't you say that? A No, sir; I never spoke to them on the tier at all. I only said Hello and so on. I just seen them pass by and said the word "Hello" to them.

Q Why, weren't you out exercising during the same time they were? A Yes, but I don't know them at all. I didn't talk to them at all, except to say Hello.

Q You knew that they were charged with the same crime that you were charged with? A Yes, but I don't really know them.

Q Did you have anybody talk to you? A No, sir.

Q Did they talk to you at all? A No, sir.

Q And did Mr. Rosenberg, counsel for the defense, say anything to you? A No, sir.

Q Before you took that stand? A No, sir.

Q Is there anybody in the world who knew what you were going to say when you took that stand, except yourself? A No, sir.

Q Nobody knew? A No, sir.

Q Mr. Rosenberg had no idea of what you were going to say?

(Objected to. Sustained.)

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Q Well, did you talk to Mr. Rosenberg, directly or indirectly? A No, sir.

Q Did anybody go over to the City Prison and ask you about this case? A No, sir.

Q Did you send your lawyer to Mr. Rosenberg? A No, sir.

Q Did your lawyer tell you that he had talked to Mr. Rosenberg? A No, sir.

Q Or these defendants here? A No, sir.

Q Well, did you get a subpoena to come here? A I don't know, sir. I was just called down from the cell to come over here.

Q You were arrested, were you not, by officers Hoffman and Foray? A Yes, sir.

Q In the machine? A Yes, sir.

Q And when you were arrested you had this burlap bag with you? A Yes, sir.

Q And quite a few furs were in the bags at the time, were there not? A Yes, sir.

BY THE COURT:

Q You did not know what was in these bags that you had, did you? A No, sir. I was just told to carry the bags out from the hallway.

Q And you did not know the contents of the bags? A No, sir.

BY MR. DONOHUE:

Q You did not, by anychance, examine them after you got them in the car? A No, sir.

Q And you did not see the policemen examine them in the

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police station? A No, sir.

Q And you have no idea at all that there was a burglary committed there? A No, sir; I had no idea of what was taking place at that time.

Q And you were convicted of burglary before, were you not? A Of unlawful entry.

Q Weren't you convicted of burglary before Judge Wadhams, in 1915? A Unlawful entry, sir.

Q And you were convicted in 1909, again, weren't you? A Well, I was sent over to the House of Refuge at that time. That was more of a charge against a child.

Q But you had a revolver with you at the time, didn't you? A No, sir; it was only a piece of lead pipe, and I only took it home, or was taking it home, to use for fishing purposes.

BY THE COURT:

Q Did you plead guilty at that time? A Yes, sir; because my lawyer told me to.

Q Well then it was not a weapon? A No, sir; a piece of lead pipe for fishing purposes.

BY MR . DONOHUE:

Q Rosenberg, were you working? A Yes, sir.

Q But you were not working this day, were you? A Well, in the Jewish holidays we have two days. My boss, Harry Schwartz, don't work on the Jewish holidays.

Q The 24th and 25th were both Jewish holidays? A Yes, and on Sunday was also.

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Q You were not working on Monday, were you? A No, sir.
But I have been working right straight through for one party.

REDIRECT EXAMINATION BY MR. ROSENBERG:

Q Well, you admit that you are guilty of the crime of which you pleaded guilty?

THE COURT: No, Mr. Rosenberg. He denies that he is guilty of the crime of which he pleaded guilty. He has denied that on this stand and the result of his denial is that the Court cannot allow an innocent man to plead guilty of a crime that he did not commit, and I am waiting for you gentlemen to complete your examination to advise the Clerk that the plea entered by this witness is withdrawn. The Court will not accept the plea of guilty of burglary, in view of this witness's testimony that he did not know that any burglary was being committed and that he was merely asked to convey a bundle from a hallway into an automobile.

Therefore, the plea that has been entered for this defendant--

BY THE COURT:

Q You have not been sentenced, have you, Rosenberg? A No, sir.

THE COURT: The plea hitherto entered by this defendant, Isidor Rosenberg, of guilty of attempted burglary, is withdrawn, and the case of the People against Isidor Rosenberg will be replaced upon the calendar, and tried as speedily as the District Attorney is ready for trial, he being indicted for burglary in the third degree, and grand

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larceny.

MR. ROSENBERG: Your Honor understands that I don't appear for Rosenberg?

THE COURT: Yes, I understand. But you raised the question as to whether he was guilty of the crime of which he pleaded guilty.

THE WITNESS: I am guilty, your Honor.

THE COURT: But he has sworn that he was innocent of the crime to which he pleaded, and I will not permit an innocent man to plead guilty in this court.

THE WITNESS: Well, I am really guilty, your Honor.

THE COURT: You will go to trial on your indictment for burglary in the third degree.

BY MR. ROSENBERG:

Q Now, you say that you never spoke to me about putting you on the stand, is that correct? A Yes, sir.

Q Now, don't you remember ever seeing me before? A I think I have seen you, over at Tenth Street and Sixth Avenue, if I am not mistaken.

Q There was some question about a Rosenberg appearing for for you over at Tenth Street, was there not? A Yes, sir.

Q And the lawyer who is now examining you, Mr. Rosenberg, saw you over in Jefferson Market, in the lawyers' room, didn't I? A Yes, sir.

Q But I didn't appear for you as your lawyer at any time,

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is that correct? A Yes, sir.

Q I didn't appear in the Magistrates' Court for you, did I?

A No, sir.

Q You had another lawyer named Rosenberg, didn't you? A Yes.

Q A man named Henry Rosenberg? A Yes.

Q Is that right? A Yes, sir.

Q And was it because of the confusion of the identity of names that I called to see you, is that right?

MR. DONOHUE: How could he tell that?

BY MR. ROSENBERG:

Q Now, because of the confusion of names, I was asked to go and see you? A Yes.

Q But you didn't talk to me about the case, did you? A No.

Q Now, did these defendants, or either of them, accompany you at any time -- A No, sir.

Q -- to commit the burglary of which you pleaded guilty?

A No, sir.

MR. ROSENBERG: That is all.

BY THE COURT:

Q Who is your lawyer? A Rudolph Stand.

THE COURT: Send word to him to be prepared to try your case, burglary in the third degree. Proceed, Mr. Donohue, with the Rosenberg case as soon as this case is finished. You had better notify counsel at once that you intend to proceed with that case.

MR. DONOHUE: Yes, sir; I will.

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(The Court then took a recess for five minutes, having admonished the jury in accordance with Section 415 of the Code of Criminal Procedure.)

AFTER RECESS:

MORRIS FERSHING, of 89 Avenue C, a witness called on behalf of the defense, being duly sworn, testified as follows:

MR. ROSENBERG: If your Honor please, this witness is in a different position than the last witness, and I think it is only fair to the witness that he ought to be admonished by the Court.

THE COURT: I was just about to do that. You have not pleaded,— he has not pleaded, has he?

MR. ROSENBERG: No, sir.

BY THE COURT:

Q Fershing, you are under indictment for the same burglary that is on trial here, are you not? A Yes, sir.

Q And you have not pleaded to it? A No, sir.

Q You are not required to answer questions that are put to you; but, if you refuse to answer any questions that may be put to you in this trial, you can only refuse to answer on the ground that the answers will tend to incriminate or degrade you. Do you understand? A Yes, your Honor.

Q And so that if any question is asked which, in your opinion, will incriminate or degrade you, you may refuse to answer that question, but only on that ground. Is that plain to you?

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A Yes, your Honor.

THE COURT: Now, proceed.

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your name? A Morris Fershing.

Q And you are now a prisoner in the City Prison? A Yes, sir.

Q Awaiting trial on the charge of having committed a burglary at 166 West 27th Street? A Yes, sir.

Q And the burglary is alleged to have taken place on the 24th day of October of this year, you understand? A Yes, sir.

Q Were you in the company of these defendants, or either of them, on the 24th day of October -- A No, sir.

Q Wait a minute. -- 1921? A No, sir.

Q Were you in the vicinity of Fifth Avenue and 23rd Street with them or either of them on that day? A No, sir.

Q Or that afternoon? A No, sir.

Q Or evening? A No, sir.

Q Were you with these defendants, or either of them, in and about the premises 166 West 27th Street? A No, sir.

Q On the evening or afternoon of October 24th, 1921? A No, sir.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. DONOHUE:

Q Did anybody speak to you about this case? A No, sir.

Q About your testifying here? A No, sir.

Q Did anybody ask you to testify? A No, sir.

Q Did anybody ask you if these men had been with you on that day? A No, sir.

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Q Do you know these men? A No, sir.

Q These two defendants? A No, sir.

Q Simon and Abe Axler? A No, sir.

Q Did you ever see them before today? A Well, the last time I was -- that last I seen them was in Jefferson Market -- the first time, rather.

Q Do you remember ^{that was} the first time you ever saw them in your life? A Yes, sir.

Q And you have seen them frequent since then, have you not? A No, sir.

Q Why did you have to hesitate about answering that question? Why did you wait so long? A (No answer.)

Q You have seen them in the City Prison nearly every day, haven't you? A Not since I was transferred to the eighth tier.

Q How long were you with them on the same tier? A Three weeks.

Q Practically in the next cell? A Yes, sir.

Q And you could talk to them from cell to cell? A Yes, sir.

Q And you could look out through the bars and talk to them in the next cell? A No, sir.

Q Why not? A Because I never talk to nobody through a cell.

Q But you could have talked to them if you had wanted to? They could have easily heard you? A Yes.

Q And the only reason you didn't talk to them was because you didn't want to talk to them, is that right? A That's right.

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Q You were not interested in them? A No, sir.

Q And you never talked with them in the City Prison at all, did you? A No, sir.

Q About your case? A No.

Q You walked around with the ^{Axlers,} ~~affixes~~ exercising, didn't you? A No, sir.

Q Never walked near them? A No, sir.

Q Weren't you exercising with them in the Tombs; weren't you walked around the yard with them? A { No, sir.

Q You were never in the yard when they were exercising?
A No, sir.

Q Or in the corridor? A No, sir.

Q And never stood outside of the cell, when the cell was being cleaned? A I did, yes.

Q Well, aren't you allowed the freedom of the corridors in the City Prison at certain times of the day? A Yes.

Q And don't all the prisoners use the corridors at the same time? A They certainly do.

Q And do you mean to say that while you were on the same tier with them for three weeks you didn't talk to the Axlers at all? A No, sir; I didn't talk with nobody about that case in the Tombs, because I don't trust any of the inmates.

Q Didn't you know that they were arrested and indicted for the same crime that you were? A No, sir.

Q And they were in the next cell to you in the City Prison?
A Yes, sir.

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Q And you didn't know that? A No, sir.

Q Now, you have been convicted quite often, have you not?

A I have been convicted twice before.

Q What is your right name? A Morris Fershing.

Q And you are also known by the name of Murray? A Yes, sir.

Q Aren't you? A Yes, sir.

Q Why are you called Murray? A Because some people call me that.

Q Well, it isn't with the idea of getting away from a criminal record, is it? A No, sir.

Q Now, you were convicted in 1915 of grand larceny, before Judge Rosalsky, weren't you? A Yes.

Q What name did you give then? A Morris Fershing.

Q And were you not convicted in 1919 again? A Yes, sir.

Q For what? A Grand larceny.

Q And you were sent to Sing Sing for that, weren't you?

A Yes.

Q Under what name? A Morris Fershing.

Q Now, when were you known by the name of Murray? A At no time.

Q You know Isidor Rosenberg? A Yes, sir.

Q Didn't he know you by the name of Murray? A He did.

Q Well, what was your reason for taking the name of Murray?

A Some people give it to me.

Q Oh, they just gave it to you? A Yes.

Q And you took it? A Yes.

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Q Now, you said you were not at 23rd Street and Fifth Avenue with these defendants?

MR. ROSENBERG: No. I beg pardon. He didn't say that.

MR. DONOHUE: I said that he said he was not there.

MR. ROSENBERG: Oh, yes, that's all right.

A I was in 23rd Street but not with these defendants.

BY MR. DONOHUE:

Q Who was with you at the time? A Rosenberg.

Q And who else? A A fellow by the name of Max Schwetz.

Q And where did you go from there?

THE COURT: Just a minute.

BY THE COURT:

Q What was the name of the man who was driving the car?

A Samuel Blume.

Q And there was nobody else with you, other than Rosenberg and Schwartz? A Nobody else.

Q And Blume, the driver of the car? A Yes, sir.

BY MR. DONOHUE:

Q Now, who called up Blume? A I don't know.

Q Well, how did you get ahold of him? A Met him on 23rd Street.

Q By appointment? A I don't know, sir.

Q Did you know him before? A No, sir.

Q You had never seen him before? A No, sir.

Q Who spoke to him? A Rosenberg.

Q Rosenberg spoke to him? A Yes.

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Q And do you know what he called him? A I don't know.

Q Did he meet him by appointment? A I don't know.

Q Or did he stop him in the street? A I don't know.

Q Was Blume's automobile stopped when Rosenberg spoke to you? A I don't know.

THE COURT: Now, let us clear this up, at least in my own mind.

BY THE COURT:

Q Was Blume a friend of yours or Rosenberg's? A Not a friend of mine, sir. I never seen the man before.

Q And how did you come to get into his car? A I was waiting at Fifth Avenue and 23rd Street, at the United Cigar Store. Coming from 27th Street, we got to 23rd Street, and Mr. Schwartz suggested getting a taxicab.

Q You don't mean Mr. Schwartz, do you? A Max Schwartz.

Q But what I want to know is how you came to get into Blume's car. A As I stated before, I was at 23rd Street and Fifth Avenue, and I happened to stop in the United Cigar sStore to buy a pack of cigarettes; and meanwhile Mr. Rosenberg had come after me and said, "I'm looking for you," and I walked down 23rd Street to Fourth Avenue, and I stepped into the car.

Q How did you come to step into the car? You say Blume was a stranger to you. A Mr. Rosenberg asked me to go with him.

Q And Rosenberg led you to Blume's car? A Yes, sir.

BY MR. DONOHUE:

Q And what time was that, about? A I don't remember.

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Q Well, about what time was it? A Late in the afternoon.

Q And where did you go in the car? A Down 23rd Street to Third Avenue, and turned south on Third Avenue to 14th Street, and the car stopped.

Q Yes, and what happened there? A The car stopped,- I don't just remember the corner,- I remember it was at Third Avenue and 14th Street.

Q Yes. A Mr. Schwartz told the chauffeur to stop, and he stopped at that corner, and Mr. Schwartz stepped out and said we should wait a little while, and in about ten minutes he returned and he had a package in his hand.

Q What kind of a package was it? A A small package, about that big (illustrating).

Q You know what People's Exhibit 1 is, don't you? A No, sir.

Q You never saw one like that before? You would be surprised, if I told you that was a jimmy, would you? A I never had one.

Q Now, you knew what that was, didn't you? A No, sir.

Q Had no idea? A No, sir. Only I handled once a thing like that.

Q Doing what? A Opening cases.

Q You never opened any doors with it, did you? A No, sir.

BY THE COURT:

Q Whodid you work for when you opened cases with a thing like that? A Mr. Katz.

Q What was his business? A Flowers and feathers, on

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Broadway.

Q What were you employed as? A I was shipping clerk for him.

Q When? A Six years ago.

Q How long did you work for him? A I worked for Mr. Katz for about a year.

Q And, as a shipping clerk, it was part of your business to open cases, was it? A Yes.

BY MR. DONOHUE:

Q And you used an instrument like that to open them (indicating People's Exhibit 1)? A Well, not exactly as big as that, a case opener.

Q Well, at any rate, you didn't know what was in that package that he had until you got back into the car? A No, sir.

Q And never suspected what was in it? A No, sir.

Q Up to this time you didn't you didn't know where you were to go or what you were to do? A No, sir.

Q And where did you go after he got back into the car?

A Why, Mr. Schwartz said something about having an appointment with a girl friend, or a couple of girl friends, and asked us to go back as far as 32nd Street; and we went up to 32nd Street, and then from there we come down to 27th Street, and he told us to wait.

Q Where were you in 27th Street? A In the middle of the block, just in front of the restaurant, between Sixth and Seventh.

Q Go ahead. A And the car stood there for about an hour

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or more.

Q Where were you in the meantime? A Sitting in the car.

Q Who was in the car with you? A Rosenberg and Mr. Schwartz.

Q And where was the chauffeur? A The chauffeur was there.

Q And what was your idea in sitting there for an hour?

A Why, we were waiting for a couple of girls to come down.

Q Who told you they were coming down? A Mr. Schwartz.

We were to meet them at 27th Street and Seventh Avenue.

Q Well, why did you sit in the automobile, then, down near Seventh Avenue? A Because we stopped off at a restaurant and had coffee and cake.

Q And you sat in the automobile for an hour? A Yes.

Q And the others, too? A Yes.

Q Why did you sit in the automobile for an hour? A We were waiting there.

Q And, after you sat there for a whole hour, what did you do?

A We stepped out and had some coffee, and got into the car again, and had smokes, and took the car across the street, in front of the premises 166 West 27th Street. Mr. Schwartz stepped out and said, "I'm going upstairs," and he went up and stayed upstairs about 15 minutes, and he come down and he had two bags in the hallway of 166 West 27th Street, and he said to Rosenberg,

"Izzy, put these in the car, and meet me at 14th Street and Third Avenue," and I got out with Mr. Rosenberg and put the two burlap bags in the car; and when we got to the corner, the officers

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approached us with revolvers in their hands.

Q And up to this time you had no idea that burglary was being committed? A No, sir.

Q And didn't suspect that any was being committed? A No.

Q You didn't go into the building at all, did you? A No, sir.

Q Did you get out of the car, at all? A Yes, sir; when Mr. Rosenberg and I put the bags in the car.

Q When was this? At what hour? A About seven o'clock.

Q And the building was closed, was it not? A Yes, sir.

Q And didn't you think it was funny for Schwartz to go in there, and take out two bags? A I didn't go into the building.

Q (Question repeated.) A Why, he had gone in there before that time.

Q Yes, he had been in therebefore, hadn't he? A Yes.
before?

Q And how many times did you see him go in there? A Once.

Q When was that? A About 6:30.

Q And what did he say he was going in then for? A He was going in to see somebody, he said.

Q Now, did he go in before or after you sat in the automobile for an hour? A I sat in the automobile before that. He went into 166 West 27th Street, about 6:30. That's the first time.

Q Did anybody go in besides Schwartz? A No, sir.

Q Didn't you go in? A No, sir.

Q Are you sure of it? A No, sir.

Q What do you mean? Are you or are you not sure? A I

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didn't go in.

Q You didn't get out of the automobile, did you? A No, sir; not until seven o'clock, when I got out with Mr. Rosenberg, and we stepped into the doorway, and there were two burlap bags and there, and each of us took one/~~x~~put it in the car.

Q How old are you? A 27.

Q And where were you working on this particular day? A I wasn't worked at all.

Q And you hadn't worked for some time, had you? A Yes, sir.

Q When was the last time you worked? A Up until August.

Q You hadn't worked between August and October, had you?

A No, sir.

Q What were you doing during that time? A Doing nothing.

Q You were pretty well in need of money, weren't you?

A Not exactly.

Q How did you live? A I had money saved.

Q Where did you save it from? A From working.

Q You saved your money, and you were able to take a vacation, is that the idea? A No, sir; not exactly.

Q What was the matter? A I was sick. Because I couldn't continue the work, going up and downstairs.

Q Who committed this burglary? A I don't know. Why ask me those questions?

Q Do you mean to say that you didn't have any idea that a burglary was being committed? A No, sir; not in the least.

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Furthermore, it seems I was just lured into this, just framed.

BY THE COURT:

Q By whom? A I was framed by this Mr. Max Schwartz. He lured me uptown and Mr. Rosenberg, who was there with me, at the time.

Q And he lured you too, did he? A Yes; it seems to me so, your Honor. I didn't know anything about any burglary being committed; when I took out those burlap bags from the house.

Q And when you picked up those burlap bags in the whallway of that place, you had no idea that the contents had been stolen?

A No, sir.

BY MR. DONOHUE:

Q Now, did you work for a man named Katz? A Yes, sir.

Q Weren't you discharged by him? A No, sir.

Q Didn't you steal money from him? Isn't that the reason he discharged you? A No, sir.

Q Are you sure of it? A Not that I know of.

Q Well, don't you know that you were discharged by him?

A I wasn't discharged. I remember leading the place.

Q Now, weren't you discharged by Mr. Katz because you stole his money from him? A No, sir.

Q How long ago did you leave him? A A gew years ago.

Q Two years? A No, sir; six years ago.

Q And where was Mr. Katz's place of business at that time?

A At Broadway, 708 Broadway.

Q What was his business? A Flowers and feathers.

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Q Now, you say you were not discharged by Katz? A No, sir.

Q And after you left, perhaps he went out of business, didn't he? A No, sir.

Q He isn't in business now, is he? A Yes.

Q As a matter of fact, didn't you steal so much money from him that he had to give up his business? A No, sir; I didn't.

Q Didn't you steal any money from him? A No, sir.

Q Not a cent? A No, sir.

Q So that you want me to understand here, Mr. Witness, that you had no idea a burglary was being committed? A No, sir.

MR. ROSENBERG: I object to that, as already testified to.

THE COURT: Objection overruled.

MR. ROSENBERG: Exception.

A I didn't know.

BY MR. DONOHUE:

Q What? A I didn't know.

BY THE COURT:

Q Do you mean to give that answer? The District Attorney asks if it is true that you had no idea that a burglary was being committed on this occasion. A I had no idea, your Honor.

BY MR. DONOHUE:

Q Now, did you know Rosenberg's criminal record? A No, sir.

Q When did you first meet him? A About four weeks previous to the day of the arrest.

Q Where? A In Clinton Street, Clinton and Delancey.

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Q What number? A I don't know the number. In front of a ice cream parlor.

Q It wasn't around Grand Street, was it? A No, sir; Delancey Street.

Q And that is where the Axlers live, isn't it? A I don't know, sir.

Q You never knew that, of course? A No, sir.

Q You live in St. Marks Place, do you not? A No, sir.

Q Where do you live? A 89 Avenue C.

Q Well, you frequently go to Clinton Street, don't you? That is your hangout, is it not? A No, sir.

Q Didn't you go down there very often, to this candy store? A No, sir.

Q Well, how did you happen to be there this day? A I happened to walk down Avenue C, going down to Clinton Street, and at Delancey Street I walked in and had a soda, and coming out I met Mr. Rosenberg.

Q Well, you say you don't know him, don't you? A No, sir; I had met him several weeks before that. I was introduced to him.

Q Where were you introduced to him? A I have no idea; I don't remember.

Q Who introduced you to him? A A friend of his that knew me.

Q Did you see Rosenbergg often after that? A No, sir.

Q When did you next see him, after you first met him?

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A About two weeks after.

Q And you met him in Clinton Street? A No, sir; on Grand Street.

Q Near Clinton? A No, near Essex.

Q And how often did you meet him after that? A The next time I met him again was on October 24th.

Q Did you know that he had been convicted of crime? A No.

Q Did you know that Schwartz had been convicted of crime?

A No, sir; and I was introduced to him by Rosenberg.

Q And he is the one who suggested going up to 27th Street?

A Yes, sir.

Q And he is the one who suggested getting the automobile?

A Yes.

Q And going back to 27th Street? A Yes, sir.

Q And stopping there an hour or so? A Yes, sir.

Q And he is the one that went into the building, and brought the bags down to the doorway? A Yes, sir.

Q And you and Rosenberg went into the building and brought out the bags? A Yes.

BY THE COURT:

Q What hour was this? A After seven o'clock.

Q And that was after business hours? A Yes, sir.

Q And that is right up in the heart of the fur district, 27th Street and Seventh Avenue, is it not? A I don't know, sir.

Q Had you ever been in that neighborhood before? A No, sir.

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Q You didn't think there was any danger to yourself as an ex-convict in picking up burlaps bags that looked like the bags now in court, and carrying them out of the building, after business hours, and putting them in an automobile? A Why, I didn't think of that at the minute.

Q You didn't think about it? A No, sir.

BY MR. DONOHUE: Now, you have mentioned the name of Schwartz before. How many different people by the name of Schwartz were with you that day? A Only one.

Q What was his name? A Max Schwartz.

Q When you got into the car, when did he go? A He told us when he got out of the car, and he went up into the building, when he come down he told us to get these two bags and put them in the car, and he would meet us at 14th Street and Third Avenue, and he went east in 27th Street.

Q Now, when you speak of Schwartz, don't you mean this defendant, Simon Axler (indicating)? A No, sir.

Q Didn't you call him Schwartz and known him as Schwartz?
A No, sir.

Q How many men were engaged in the burglary? A There was Rosenberg, Sxhwartz, Blume and myself.

Q Just the four? A Yes, sir.

BY THE COURT:

Q What kind of a looking man is Schwartz? A About my build, and dark complexion.

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Q How tall are you? A Five feet eight.

Q Now, what else about him? A Dark complexion.

Q That is, five feet eight and a dark complexion? A Yes.

Q And what else? A That's all.

Q Is that all? A Yes.

Q And that's the only way you can describe him? A Well,
I only saw the man once.

Q Well, you were in his company for several hours, were you
not? A Yes.

Q And he lured you into a crime, for which you have been
indicted? A So it seems.

Q And you were riding around in an automobile with him and
at 27th Street and Seventh Avenue, he told you to put these burlap
bags, with their contents, in the car, and told you he would
meet you away over at Third Avenue and 14th Street? A Yes, sir.

Q And the only description that you can give is that he is
five feet eight and has a dark complexion? A Yes, sir.

Q Are you indicted as a first or second offender? A No, sir.

Q Have you a lawyer? A No, sir.

Q You have not had a lawyer since you have been indicted?
A No, sir.

THE COURT: Do you know whether he indicted as a first
or second offender?

MR. DONOHUE: Yes, sir; a second offender.

BY MR. DONOHUE:

Q Now, how long did you know this man Schwartz? A That

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was the first day I met him.

Q Who introduced you to him? A Mr. Rosenberg.

Q And where did you meet him? A At 14th Street and Irving Place.

Q What place is there? In front of what place? A In front of a candy and confectionery place, right next door to the Academy of Music.

Q What were you doing then? A Taking a walk on Fifth Avenue,- at least, that is what we intended to do.

Q Why, didn't you and Rosenberg intend to go in and see the show at the Academy of Music? A Yes, but we changed our mind.

Q It was not something that Schwartz told you that influenced you to change your mind, was it? A No, sir.

Q And where did you go? A We went to 32nd Street. Mr. Schwartz told us that he had an engagement with a couple of girls.

Q Didn't you say before that the girls' names were not mentioned until after you got into the automobile? A I did not.

Q And now you say that at 14th Street and Irving Place he said he had to meet some girls? A Yes, sir.

Q And to come on and take a walk? A Yes, sir.

Q Well, where did you go? A Walked up to 32nd Street.

Q What did you do then? A Turned back.

Q And what did Schwartz do up there? A He was with us.

Q Well, did he say anything to you at 32nd Street? A No, sir.

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Q Didn't he try to locate the girls? A No, sir. He said, "Let's walk down as far as 27th Street."

Q And you walked down to in front of 166 West 27th Street?

A Yes.

Q What time was that? A In the afternoon.

Q What time? A I don't remember exactly.

Q And you went to the theatre, to the Academy of Music, that afternoon? A Yes, sir; about three o'clock.

Q And then walked up to 32nd Street? A Yes, sir.

Q How long did that take you? A I don't know.

Q Did you stop on the way up there? A We sat down in the park for a while.

Q Didn't you just say that you walked up to 32nd Street, and looked around a little, and then walked back to 27th Street? didn't

A But you/asked me what I did, in the meantime.

Q Well, what did you do? A I will ask you now. A We sat in the park for about an hour.

Q And you were moving around for about an hour before you arrived in 27th Street, or an hour and half? A Yes, and perhaps more than that.

Q And you must have got into 27th Street again about nine o'clock? A It was later than that.

Q Well, you reached the Academy of Music, you say, about three o'clock? A Yes.

Q And you then walked to 37th Street? A Yes, but we sat

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in the 23rd Street Park for about an hour.

Q And then you walked up to 32nd Street, didn't you? A Yes.

Q And came back to 27th Street? A Yes.

Q And that was five o'clock, was it not? A Yes.

Q And how many times were you in front of 166 West 27th Street altogether? A Twice.

Q When was the first time? A The first time, coming down to 27th Street, and we went through 27th Street to Fifth Avenue and down to 23rd Street, and we came back to 27th Street, and that's when they arrested me.

MR. DONOHUE: That is all.

MR. ROSENBERG: That's all. The defense rests.

MR. DONOHUE: May I recall the defendant that I was cross examining, your Honor.

THE COURT: Yes, he may be recalled.

A B R A H A M A X L E R, being recalled for further cross examination, testified as follows:

CROSS EXAMINATION (Continued) BY MR. DONOHUE:

Q Now, you said a little while ago that you worked for L. Weiner up until October, 1921, is that right? A Yes.

Q Now, as matter of fact, you went to work there, did you not, on September 10th, 1919, and left March 10th, 1920?

A I worked there for two years. I don't remember what month I started or when I stopped.

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in the 23rd Street Park for about an hour.

Q And then you walked up to 32nd Street, didn't you? A Yes.

Q And came back to 27th Street? A Yes.

Q And that was five o'clock, was it not? A Yes.

Q And how many times were you in front of 166 West 27th Street altogether? A Twice.

Q When was the first time? A The first time, coming down to 27th Street, and we went through 27th Street to Fifth Avenue and down to 23rd Street, and we came back to 27th Street, and that's when they arrested me.

MR. DONOHUE: That is all.

MR. ROSENBERG: That's all. The defense rests.

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THE COURT: Yes, he may be recalled.

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CROSS EXAMINATION (Continued) BY MR. DONOHUE:

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Q Now, as matter of fact, you went to work there, did you not, on September 10th, 1919, and left March 10th, 1920?

A I worked there for two years. I don't remember what month I started or when I stopped.

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Q And you don't remember when you quit? A No. I said on October 24th I didn't go to work. I didn't quit at all. I didn't go to work for two weeks before I was arrested.

BY THE COURT:

Q When you said two weeks, did you mean two weeks or two years? A Two years I was working there.

BY MR. DONOHUE:

Q Who is the manager up there? A There is no manager there.

Q Who is the lady in charge there? A It used to be his sister.

Q What is her name? A Lena Meher.

Q Did you work on October 24th? A One day I didn't work. I don't remember if it was the 24th or 25th.

Q And you didn't leave there on March 10th, 1920, Mr. Weiner's place? A No, sir.

MR. DONOHUE: That is all.

THE COURT: Just a minute.

BY THE COURT:

Q You are not the one that worked for Birnbaum, are you?

A No, sir.

Q That is the other defendant? A Yes, sir.

THE COURT: Step down.

MR. DONOHUE: If your Honor please, may we adjourn now?

It is after one o'clock. At the reconvening of the court,

I expect to have another witness to put on the stand.

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THE COURT: Very well. We will then adjourn now.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2:30 p. m.)

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AFTER RECESS:

REBUTTAL:

D O R A G O O D M A N, of 1087 Hall Place, the Bronx,
a witness called on behalf of the People, in rebuttal,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Now, Miss Goddman, what is your business? A Bookkeeper.

Q Now, won't you talk up so that the last juror can hear you? A Bookkeeper.

Q For whom are you bookkeeper? A L. Weiner, 11 West 17th Street.

Q And how long have you been bookkeeper there? A Two and a half years.

Q Among your duties as bookkeeper, is the keeping of the time book, is it not? A Yes.

Q And the amount of money that has been paid out by L. Weiner, by way of salaries? A Yes.

Q And do you keep a list of all employees? A Yes, sir.

Q Now, look at this defendant, Abe Axler. Do you know him?
A Yes.

Q When did you first become acquainted with him? A In September, 1919.

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Q And in what way did you become acquainted with him? A Being in the employment of L. Weiner.

Q And, as bookkeeper, you kept his record? A Yes, sir.

Q Have you brought the books of L. Weiner & Company here?

A Yes.

Q And they are kept by you, in your own handwriting? A Yes.

Q And does that book which you hand me contain a record of the entrance into the employ of L. Weiner of all employes, and whether they are still employed or not? A Yes, sir.

Q Now, turn to that book, and tell us, if you please, whether Abe Axler ever worked for L. Weiner? A Yes, he did.

Q Beginning when? A In the beginning of September.

Q And do you remember that of your own accord? A Yes, sir.

Q You remember it, do you? A Yes.

Q Now, when did he leave the employ?

BY THE COURT:

Q September, 1929? A Yes, sir.

BY MR. DONOHUE:

Q Now, when did he leave that employment, the employment of Mr. Weiner? A March, 1920.

Q What particular day in March? A It was about the middle of March, about the 10th or 12th.

Q And have you a record of all the people employed by that firm, from ~~September~~ March 10th up to October of this year? A Yes, sir.

Q Do you know when he ceased to be in the employ of

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L. Weiner? A In March.

Q And did he ever work there after that? A Well, he may have worked for a week or two now and then, off and on.

Q And ^{was} he working for Mr. Weiner in October, 1921? A Yes, about two weeks.

Q What two weeks were they? A Well, from the middle of October.

Q Until when? A About the end of October.

Q Did he cease then? A Yes, sir.

Q And he didn't work there on October 24th, did he? A I don't know the exact date.

Q Well, he left the employment as a permanent employe, in March, 1920, did he? A Yes, sir.

Q Can you tell us how much money he drew from March, 1920, up to date? A Yes -- as a whole?

Q Yes? A No. I didn't figure it up.

Q Well, was he on the payroll as a permanent employe, receiving \$35 a week, after March, 1920? A After that he wasn't working steady, and so he wasn't on the list of permanent employes.

Q Now, have you produced the books up to date? A No, sir; it isn't up to date.

Q Up to what date have you produced them? A Up to September, 1920.

Q September, 1920? A Yes, sir.

Q Well, have you produced the books for 1921? A No, sir.

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BY THE COURT:

Q Where are they? A They are at the office.

Q And where is your place? A In 17th Street.

MR. DONOHUE: May I look at the books, please? the place to which you referred before? Where is that place?

THE WITNESS: Here (indicating).

BY MR. DONOHUE:

Q Which particular entry do you refer to, Miss Witness?

A This one (indicating).

Q Well, what was his salary while he was working for you?

A Well, he started at a low salary, and --

BY THE COURT: Well, we don't know what a low salary means.

What did he start with? A \$12.

BY MR. DONOHUE:

Q And what was he getting when he left there, as a permanent employee? A \$15 a week.

Q And what was his position there? A He was an all around man, but he used to assist the cutter at times.

Q And what was his salary in 1920, when he left? A He left in March, the permanent employ.

Q And what was his salary then? A \$15.

Q And can't you tell us from your own knowledge how often he was paid, from March, 1920, up to October, 1921? A I couldn't tell you.

Q Well, you were there yourself? A Yes, I know, but I can't remember it without the book.

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Q Well, was he there very often? Would you say that he was there before five months steady? A No, sir. He did work for about two months, at a stretch.

Q At a stretch? A Yes, sir.

Q Now, I just wish to see if I can refresh your recollection, Miss Goddman. Didn't you tell me, during recess, that he left your employment in March, 1920? A Yes, sir; permanent employment.

BY THE COURT:

Q Can you give us any better idea than you have as to how much time he put in there, since March of last year? A No, sir; because I didn't look up my records.

Q But, independent of your records, did he work a week at a time or a month at a time? Have you any idea whether he worked six months at a time? A It is possible that he did, I couldn't tell you exact.

Q You don't know? A No, sir.

BY MR. DONOHUE:

Q Miss Goodman, have you -- after you talked to me, did you talk to Mr. Birnbaum, the defendant's brother in law? A I didn't talk to anybody.

MR. DONOHUE: Come forward, Mr. Birnbaum.

Q Didn't you talk to this gentleman, out in the hall (indicating)? A Yes, out in the hall I did.

Q Do you know who he is? A No, sir.

MR. DONOHUE: He is Charles Birnbaum, if your Honor please.

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Q But you did talk to him out in the hallway? A Yes, sir.

Q Did he speak to you first, or did you speak to him first?

A We were not speaking directly to one another at all. There were quite a few people there.

Q Well, how did you manage to get into conversation with him? A I didn't get into conversation with him directly; I was talking to Mr. Ettinger.

Q This man, do you mean (indicating)? A He was in the crowd there.

Q And did he come over and speak to you? A Yes.

Q Did you tell him and those other people there what you were brought down here for? A Yes, sir.

Q How did you come to talk to those people? A Because I knew Mr. Ettinger.

Q Then you changed your story after you spoke to me, didn't you? A How did I change the story?

Q Didn't you tell me that Abe Axler left the employ of your firm, of the concern, in March, 1920? A Yes, sir.

Q And then, after that, you spoke to these men that I have pointed out? A No, sir; it was before I spoke to you.

BY THE COURT:

Q Why didn't you tell the District Attorney that after March, 1920, this man did work occasionally for your concern? A Because he was called in here immediately, when I was speaking to him.

Q Why didn't you tell the District Attorney, when you told him that he worked until March, 1920, that he did work from

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between that time and October, 1921? A Because I didn't think of it.

BY MR. DONOHUE:

Q This is the officer who brought you down here, is it not (indicating), officer Foray? A Yes, sir. But we didn't come down together. He come over to the place, and he had a subpoena for Mr. Weiner.

Q And didn't he ask you up there how long Abe Axler worked for your company? A Yes, sir.

Q And what did you tell him? A Just what I told you.

Q What did you tell him? A I told him that he was in permanent employ from September to March.

Q Didn't you say to the officer, on the way down, Miss Goodman, that he left the employ of your company in March, 1920?

A Yes, he did.

Q And did you mention anything about his going back for temporary employment? A No, I didn't.

Q It was only after you spoke to these men in the audience that you said he worked temporarily for your concern after March, 1920? A I didn't speak to these men at all, not to those people.

Q What were you talking to them about? A I know that man for a long time, and I spoke about things in general.

Q You mean Mr. Ettinger? A Yes.

Q Who is Mr. Ettinger? A A brother in law of Abe Axler.

Q And is he the gentleman who is in Business with Mr. Birnbaum? A I don't know.

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Q He is in the same line of business that your concern is?

A Yes.

Q And is in partnership with somebody? A I don't know.

Q Now, you have a book, you say, up at your place, at your office, that would show whether Abe Axler worked for the concern after March, 1920? A Yes, sir.

Q In your own handwriting? A Yes, sir.

BY THE COURT:

Q Why didn't you bring that book with you? A Because I didn't think it was necessary.

BY MR. DONOHUE:

Q Didn't the officer ask you to bring your books? A This book (indicating). I showed it to him.

THE COURT: All right. Produce the book. This witness will remain in court, and someone else will go up and get the book. Are you through with the witness, Mr. Donohue?

MR. DONOHUE: Yes, sir.

CROSS EXAMINATION BY MR. ROSENBERG:

Q You are a bookkeeper of the firm of L. Weiner? A Yes, sir.

Q Did you come down to this courthouse with Officer Foray?

A I did not.

Q Did you come down alone? A Yes, sir.

Q Mr. Donohue seemed, by his questions, to think that you came down with him. A No, I didn't. I met him in the lobby. the hallway.

Q When did you first hear about this case? A When the

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officer came up into the place, with a subpoena.

Q What did the officer say? A He asked me for Mr. Weiner, and I said he was out. And then he told me the nature of his business, and that I could take Mr. Weiner's place.

Q And you came down with the books? A I did.

MR. ROSENBERG: That is all.

THE COURT: Now, do you want the book, Mr. District Attorney?

MR. DONOHUE: Yes, sir; I think the jury would like to see it.

THE COURT: Officer Foray, accompany this young lady up to her place of business. Where is it?

THE WITNESS: 17th Street and Fifth Avenue.

THE COURT: This officer, will go up with you, Miss, to get that book. And bring it down immediately, with any other records, cards, or memoranda that in any way indicate the time that this defendant spent in your employ, after March, 1920, together with the amounts that were paid him for that work. Now, do you understand?

THE WITNESS: I do.

THE COURT: Very well. The officer will go up with you. And return as soon as possible.

MR. DONOHUE: In the meantime may I recall officer Hoffman?

THE COURT: Yes, you may call any witness that you desire.

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Miss Goodman, is there anybody in the office at the present time?

THE WITNESS: No, sir.

THE COURT: Nobody that could be telephoned to?

THE WITNESS: No, sir.

THE COURT: All right. Then you and the officer may go together.

HENRY F. HOFFMAN, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Now, officer, when you placed these defendants under arrest did you search them? A I did, sir.

Q And about what time of the day was it that you searched them? A About 10:30 in the morning.

Q And how much money did you find on Simon Axler? A Seven cents.

Q Did you find a hundred dollars in his pocket? A No, sir.

Q Or any bills at all? A No, sir.

Q You just found seven cents? A Yes, sir.

Q Did you search Abe Axler? A Yes, sir.

Q Did you find any money on him? A None at all.

Q Absolutely none at all? A Yes, sir.

Q There was only seven cents between them? A Yes, sir.

Q And that was at 10:30? A Yes, sir.

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CROSS EXAMINATION BY MR. ROSENBERG:

Q Did you have any search warrant to search these defendants?

(Objected to. Allowed.)

A No, sir.

Q You knew it was against the law to search them, didn't you?

MR. DONOHUE: I object to that.

THE COURT: Objection sustained. It is not against the law. It is the officer's duty to search any man that he makes a prisoner.

BY MR. ROSENBERG:

Q And did you take the fingerprints of these young men?

A Yes, sir.

Q And you knew that was against the law, didn't you?

(Objected to. Sustained. Exception.)

Q Did you have these young men photographed for the Rogues' Gallery? A Yes, sir.

Q Did you know that was against the law?

(Objected to. Allowed.)

A No, sir.

MR. ROSENBERG: That's all.

MR. DONOHUE: That is all. If your Honor please, I think that is all we can do until the girl returns with the books, and then, I think, both sides will rest.

THE COURT: You have nothing further to present, Mr. Rosenberg.

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MR. ROSENBERG: No, sir.

THE COURT: Then, gentlemen, we will take a recess --

MR. DONOHUE: They went up in a machine, and so they may be back soon.

THE COURT: We will take a recess for twenty minutes. Don't leave the courtroom, gentlemen. If you want to smoke you can go back to the jury room, or stay here, or do anything that you like, but don't go out into the corridor. You had better stay either here or in the jury room.

Don't talk about the case among yourselves, even at this time. It is very important that you should not discuss the case among yourselves, or form or express any opinion about it.

We will take a recess now until five minutes past three o'clock.

AFTER RECESS:

D O R A G O O D M A N, being recalled by the District

Attorney, for redirect examination, testified as follows:

REDIRECT EXAMINATION BY MR. DONOHUE:

Q Now, Miss Goodman, since you left the stand, did you go back to your office? A Yes, sir.

Q And did you endeavor to locate the book that you went to get? A Yes, sir.

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Q Did you find the book? A No, sir; because it is closed up in the safe.

Q And you are the bookkeeper there, are you not? A Yes, sir.

Q And you haven't the combination of the safe? A I have the combination, but not the key for the inside door.

Q Well, you knew that when you were on the stand here before?
A Well, Mr. Weiner then was in, at that time.

Q Now, were there not two people in the office when you left there? A Yes.

Q And weren't they there when you got back? A Yes, but they are only working people.

Q Didn't you, in the presence of the officer, when you left, tell them where you were going and when you would be back? A Yes.

Q Now, do you mean to tell us that there is really a book such as you have described? A Yes, sir.

Q Kept by you? A Yes, sir.

Q And you couldn't bring it down? A Yes, sir.

Q Because you haven't the combination of the inside part of the safe? A I haven't got the key.

Q Where do you keep this book, do you say? A In the safe.

Q Well, the outside door of the safe was open, was it not?
A Yes, sir.

Q You opened this morning, didn't you? A Yes.

Q And you haven't got the key of the door inside of the safe? A No, sir.

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BY THE COURT:

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Q Where was the book that you did produce kept? A It was kept on a shelf, and I kept it on the shelf with more old books.

THE COURT: Proceed.

BY MR. DONOHUE:

Q And you have not been able to produce the book? A No, sir.

Q Do you know where Mr. Weiner is? A No, sir.

Q And have no idea? A No, sir.

Q Well, have you refreshed your recollection as to when this defendant Abe Axler worked for the concern, since March, 1920, how often he worked for your place? A No, sir; I don't know definitely without the books.

Q Now, let us see. Did you hear when he was arrested?

A No, sir.

Q When did you first hear about this case? A When the officer came up.

Q You had never heard of it before? A No, sir.

Q And you can't tell us when the last time you saw him in your place was? A In October.

Q Are you sure you saw him in October? A Yes, sir.

Q And how long in October was he there? A About two weeks.

Q Which two weeks? A Which two weeks?

Q Yes. The first, last, or middle, or when? A The first two weeks.

Q Pardon me? A The first two weeks.

Q Beginning on October 1st? A Yes.

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Q And ending when? A About the 15th.

Q And did he work there in September? A I think he worked one week in September.

Q Which week was that? A About the third week.

Q The third to the fourth? A Yes, sir.

Q Then, as matter of fact, didn't he work the first two weeks in October, and the last week in September? A Yes.

Q Three weeks steady? A Yes, sir.

Q Now, are you sure of that? A Yes, sir.

Q And when did he work there before that? A July or August, I can't remember definitely.

Q Are you sure that it was not in the early part of September? A No, sir.

Q He just worked oneweeek in September, and that was the last week? A Yes, sir.

Q And did he work there in August? A I can say whether it was August or July.

Q You say this book -- ^{is not} ~~that~~/this ~~is~~ the book that you have in mind, as being/ⁱⁿ the inside part of the safe? Isn't that kept by daily entries? A No, sir.

Q How often do you take it out of the safe? A Once a week.

Q How do you get it? Where do you get the key? A Business is dull nowand we have no occasion to use it, and, therefore, I don,t have any key.

Q Don't you use the book all the time? A I did, once a week only.

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BY THE COURT:

Q Where do you get the entries from that you put in the book, once a week? A The only book I use is the payroll book. We have cards that we have to mark time on.

Q Now, you get your time that you enter in this book from cards? A Yes, sir.

Q Where are the cards kept? A Well, a ~~gi~~ boy that worked there like that, we never kept any cards for him.

Q How was he paid when he worked there steadily? A By the week.

Q On what day of the week? A On Wednesday.

Q And did he present himself to you for his pay? A Yes, sir.

Q And when he came on a Wednesday, we will say, in September, for his pay, how would you know how much pay to give him? A Well, it was the same every week.

Q But it wasn't the same since March, 1920, was it? A No, sir.

Q Now, my question is ~~is~~during the time that you say he was working on and off, how would you know how many days a week he worked, when he came to get his pay on Wednesdays? A Well, he always worked a full week, if he worked at all.

Q Did he work for the whole week in September? A Yes, sir.

Q And how much did he receive? A \$25.

Q Although the highest amount he was getting in March and before that, was \$15? A Yes, sir. But, when we needed him to work for just a week or so, we paid him more.

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

Q Well, was it not \$35 a week? A Well, in October it was thirty.

Q Did he ever receive \$35 a week? A No, sir.

Q And what was it in September? A \$25.

Q How would you know that he worked the full week when he came to you for his pay? A I am there all the time, and I would see him all the time.

Q So that he could not have worked there without you seeing him? A No, sir.

Q Now, this is December, 1921. Two months ago you say he worked there for you? A Yes, sir.

Q For how many weeks? A Three weeks.

Q Three weeks in October? A Two in October and one in September.

Q Only one week in September? A Yes, sir.

Q And do you know when he quit work in October? A About the 15th. He worked the first two weeks in October.

Q So that you say he didn't work there after the 15th of October? A No, sir.

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

Q You are sure that he was not working there on the 20th?
A No, sir.

Q Of October? A No, sir.

THE COURT: I have nothing further.

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MR. DONOHUE: Just one more question and I will be through.

BY MR. DONOHUE:

Q Now, this is the book for 1920? A Yes, sir.

Q And that shows all the employees who worked for your firm during 1920? A Yes, sir.

Q And the last entry you have of Abe Axler working for you in that year is March 10th? A Yes, sir.

Q And there is no further entry in this book relating to him? A Yes, sir.

Q And that is the only book you kept for 1920? A Yes, sir.

Q So that you can say positively that he did not work for your firm after March, 1920? A But that book isn't for the whole year 1920, is it?

Q It is up to September 15th, 1920? A Yes, sir.

Q You are sure, are you, that he did not work for your firm from March 10th up until September 15th, the last entry in this book? A Yes, sir.

MR. DONOHUE: That is all. The People rest, if your Honor please.

THE COURT: Do both sides rest?

MR. ROSENBERG: Yes, sir.

Now, I move that the District Attorney be compelled to elect on which count of this indictment he intends to proceed, or go to the jury.

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THE COURT: The motion is denied.

MR. ROSENBERG: Exception.

MR. DONOHUE: May I say, your Honor, that the District Attorney would like to go to the jury on both the counts of burglary and grand larceny?

MR. ROSENBERG: This being the first intimation that the District Attorney intended to proceed upon two counts of the indictment, or upon the charge of larceny and burglary combined, the defendants object to the submission of this case to the jury upon those counts, upon the ground that this indictment is not predicated or framed upon the law described in the Penal Law, Section 406, which authorizes the submission of both charges to the jury. This indictment is predicated upon an indictment which sets out three crimes, or rather, one crime, committed in three different ways, and it was not intended by this indictment, and the defendants have not been advised by this indictment, but it was intended to charge them with this aggravated burglary, or aggravated larceny, that is, the burglary with the larceny, or the larceny with the burglary.

THE COURT: The indictment charges the defendants with burglary in the third degree and with grand larceny in the first degree.

MR. ROSENBERG: Yes, sir; that is the ordinary indictment upon which a pleader charges one crime, committed

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in three different ways, so that it permits the District Attorney to elect, at the close of the case, which of these three counts he intends to rely upon. But, where there is an aggravated burglary or larceny, under this section of the Code, I claim that the indictment should the defendants, and advise them by the indictment, that they are to be charged with this aggravated crime.

THE COURT: I do not understand that the Code provision, or the provision of the Penal Law, says anything about an aggravation of the crime. The provision is that a burglar who, having entered a building, under ^{such} circumstances as to constitute burglary in any degree, commits any crime therein, is punishable therefore, as well as for the burglary, and may be prosecuted for each crime separately, or in the same indictment.

Now, as I read the indictment, they are charged with burglary, and, in addition thereto, are charged with having committed grand larceny, upon the same premises, and in connection with the burglary, and it does appear to me that, if there is any case which this section of the law that you site was designed to cover, it is this case.

MR. ROSENBERG: But, where the People intend to rely upon that law, I claim that it is necessary to allege in the indictment, as one count, the charge of burglary and larceny.

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Now, if they intended to prosecute them separately, by separate indictments, then of course it would be a separate charge of larceny or burglary.

THE COURT: There is no obligation on the part of the People to present separate indictments.

MR. ROSENBERG: Then, if they don't prosecute them by separate indictments, if they want to come within the provision or purview of that statute, I claim that it is necessary to include in the one count the charge of burglary and larceny.

Now, this is not a matter entire free from doubt, the claim that I make, your Honor; and in all fairness, I will say that the question came up in the Appellate Division, in the case of the People against Pobolowsky, and also in the case of Maloney and Ferrick.

Now, in the Ferrick case, the question was not raised on the trial, and I raised the question, for the first time, at the Appellate Division, and I was beaten. The conviction was affirmed, without an opinion.

And the Maloney and Ferrick case I tried before Judge Mulqueen, and I took exception to the court submitting the case upon both counts, after the case was closed, and when I was first advised that it was intended to charge the double offense, and the Appellate Division affirmed that case, without an opinion.

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Now, it may be that I was late, or rather, it may be that the point was taken too late in those cases. So that, when Mr. Donohue, for the first time, advised us that he intends to claim a conviction on both counts, I take the objection now, for the first time, and that is why I say I think I am entitled -- that I am in time, rather, -- that the objection is timely taken.

THE COURT: Have you any authority for the suggestion that you make?

MR. ROSENBERG: The only authority that I have --

THE COURT: Just a moment. That there must be a special and particular form of indictment, in which the crime of burglary and the crime of grand larceny shall be merged into one count? Have you any authority for that?

MR. ROSENBERG: Yes, sir, if your Honor will send up to the District Attorney's library. They have the case of Maloney and Ferrick there.

THE COURT: Yes, but the Appellate Division, on the precise point raised by you, has decided against you.

MR. ROSENBERG: But I was late.

THE COURT: But the Appellate Division does not say so. They did not write an opinion at all, did they?

MR. ROSENBERG: No, sir. And, in the second case, I took objection when Judge Mulqueen charged the jury and apparently I was late then.

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But now, before the case is submitted to the jury, and when I am first advised, and the defendants are first advised, that it is intended to hold them on this double charge, under the charge contained in the indictment, I take this early opportunity to say that we object to that procedure.

THE COURT: The Court will submit this case to the jury on the first count of the indictment, charging burglary in the third degree, and on the second count of the indictment, charging grand larceny in the first degree, under the authority of Section 406 of the Penal Law, and to that you may take your exception, and that will protect your rights.

MR. ROSENBERG: We take exception, sir. Will your Honor adjourn now? It is a quarter of four o'clock. Are we expected to sum up now?

THE COURT: Well, proceed for the present.

(Mr. Rosenberg then summed up for the defense, and Mr. Donohue closed the case for the People.)

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THE COURT'S CHARGE

Talley, J.

Gentlemen of the Jury:

The defendants in this case were indicted for the crime of burglary in the third degree and grand larceny in the first degree. The names of the defendants are Abraham Axler and Simon Axler, and they are charged with the crime of burglary, in that, on the 24th of October, 1921, they feloniously and burglariously broke and entered the premises of a firm doing business under the name of Schelnick, Friedman & Appelbaum, with intent to commit a crime therein, and to steal the property of that co-partnership.

There is a further count in the indictment which charges them with grand larceny in the first degree, in that, on the same day and at the same place, they took five coats, of the value of four hundred dollars each, seven other coats, of the value of two hundred dollars each, and certain pieces of fur, of the value of twenty dollars each, the property of this co-partnership, and that they stole and carried those articles away.

Now, gentlemen, this is the indictment to which I have called your attention (indicating the indictment), and I charge you that you are not to indulge in any presumption against these defendants, or either of them, merely because they have been indicted, because an indictment is nothing

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more or less than an accusation in writing, its purpose being to bring the defendants into court, and to advise them of the details and particulars of the crime which they are required to meet.

At the outset, let me advise you that it is the law that a person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids and abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime, is a principal. In other words, gentlemen, the law recognizes no distinction in responsibility for crime as between those who are concerned in the commission of the crime and one who takes any part in bringing about the result which we call the commission of the crime, and that person is equally guilty with everybody else concerned in the commission of that crime.

Perhaps the best way to illustrate that principle of law is by this illustration. A man may go up to the third floor of a building, and there commit a crime of any description, and he may have an accomplice standing upon the sidewalk, or across the street from that building, acting as a look-out, and watching for the police. The look-out across the street, who never enters the building, if he is there for the purpose of giving warning to his accomplice on the third floor of that building, is held,

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under the law, to an equal degree of responsibility with the man who is on the third floor of that building, because he is concerned in the commission of that crime. He is there, it is true, only as a sentinel, only as a look-out, his hand may never touch the stolen article, or the person who is assaulted, but he is regarded as equally culpable with the man who is inside of the building, as though he had himself entered it, and actually taken part in the crime, because there are no degrees of responsibility for crime, once a man goes into the project of committing a crime with other men.

You, gentlemen, are the exclusive judges of the facts in this case. Your province as judges of the facts is to determine where the truth lies. Both sides of this case cannot be telling the truth, that is sure. The officers' testimony must be false, with regard to both of these defendants, if these defendants have told you the truth, because they cannot possibly stand together; and, as judges of the facts, your task is to find out where the truth lies; and, in arriving at that conclusion, you have the right to bring into play in this case, your common sense, your experience and your knowledge of mankind. You have the right to judge the manner of all the witnesses in this case, their manner of testifying, and determine from all of the elements which you bring into the jury box, when you begin your task as judges of the facts in this case. You have a right to bring them in, and apply them to each bit of testimony, and

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each witness who appears upon the stand.

You might inquire into the interest that each witness has in the outcome of this case. You might inquire as to why these two policemen, who undoubtedly did make an arrest of the persons who were in this touring car, and carrying away this complaining merchant's goods, and you might inquire why they came to this place in the car. The officers testified that they trailed them, these two defendants, around from about three o'clock in the afternoon until seven o'clock in the evening of this day, and they described to you in detail their circuitous movements from 23rd to 27th Streets, and through those streets to 4th and Seventh Avenues; and you might consider what motive, if any, they have in coming into this court-room, and saying, "These are the two men whom we trailed, and who entered that building 166 West 27th Street, and who conferred with Rosenberg and Fershing, and were there when they arrested Rosenberg and Fershing, and Blume, the driver of the car.

You may inquire what interest these defendants had, this being the trial of the indictment against them, to color or fabricate their testimony, because of their interest in the case. In other words, you may examine and scrutinize the testimony of every witness by these common-place but intensely practical tests, which the average man applies to every statement, the truth of which becomes an issue, as it does in this case.

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There were certain rulings during this case that were made by the Court. You have no concern in them, because they are matters of law, and they are determined by the Court as matters of law, because he is the judge of the law, while you are the judges of the facts, and both of us are supreme in our respective domain, and one province must not overlap the other.

These defendants are entitled to, and must receive certain extremely important safeguards which our form of law throws around the form of every defendant in a criminal case.

The first of these is that these two defendants are presumed to be innocent until their guilt is proven, and the second is that their guilt must be proven to your satisfaction, beyond a reasonable doubt.

When we say that they are presumed to be innocent until their guilt is proven to your satisfaction, beyond a reasonable doubt, we mean this, that they are not required to come into court because they have been indicted, and prove that they are innocent of this crime. On the contrary, the burden is on the People to prove their guilt, and they could remain in their seats, without saying a word in this case, they could stand mute, and demand that the district attorney prove that they were guilty of this crime of burglary and larceny. That is the burden which the People have undertaken to sustain, the burden of satisfying you beyond a reasonable doubt that these two defendants are the

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men who did the things that the officers state they did; and, if you believe that they did those things, then you may find them guilty of the crime with which they are charged.

A reasonable doubt is a doubt that arises in reason. It is a doubt that any sensible man might have about any of the ordinary affairs of his business or domestic life, after a careful and conscientious review of all the circumstances. It is not a mere guess, it is not a whim or surmise, and it must not be used as a subterfuge to avoid doing a disagreeable duty. If there is a reasonable doubt in your mind, it must be an honest doubt that arises from the testimony, and from nothing else. It must not arise through sympathy or prejudice of any character, for those emotions have no place in a jury box or in a court room, where all must stand equal before the law, and be adjudged by the testimony in the case, and by nothing else.

The law does not require that the guilt of the defendants be proved to a jury to amathematical certainty. So few of the things of life are subject to that exactness of proof that, to put such a burden upon the district attorney of this county would be giving him a heavier load than he could possibly be expected to carry. It would be placing upon him too great a burden for him to sustain. It is not mathematical certainty that a jury must have, but it is proof beyond a reasonable doubt that they must have, before they are called upon to convict; and if, after a careful

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review of all the testimony in this case, you have a reasonable doubt that these two defendants were the men who participated, or were concerned in the burglary of these premises, then you must acquit them. But if you have no reasonable doubt that they were the men who were concerned in the commission of this crime, then it would be an unthinkable thing, gentlemen, if, being satisfied of that fact, you failed to do your duty, and failed to convict them of the crime charged; because, after all is said and done, the ultimate enforcement of the law of this land depends upon whether or not jurors do their duty. If twelve men like you shrink from your duty, if you exercise the power that is yours to send guilty men out, unwhipped of justice, after being satisfied by the evidence, beyond a reasonable doubt, of their guilt, it needs no words to indicate the seriousness of such a situation. All that is required of you twelve men is that you do exact justice, justice that is exact with respect to these two defendants, and justice that is exact with respect to the People of the County of New York, who are equally entitled to consideration.

The defense in this case, gentlemen, is what is known as an alibi. They say that they were elsewhere, that they were not at 27th Street and Seventh Avenue, in the County of New York, on the day and at the time that the police officers say that they saw them, and they have taken the stand in their own defense, and their testimony may and must be scrutinized

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in the same manner as that of any other witness. They have described to you their whereabouts on the 24th of October, and they have told you what they did from the early morning of that day until late that night.

It is quite manifest that, if what they have testified to is true, what the officers testified to is false. The officers do not say that there is any doubt in their minds that these are the men about whom they were talking. They say they trailed them around from three o'clock in the afternoon until about seven o'clock that evening; that they were watching them; that every move they made, these officers were on their track. They do not say they were trailing two other men, in addition to Rosenberg and Fershing and Blume, two men other than these. They say these are the two men whose movements they had under observation for a period of three or four hours, and that these are the men that they put under arrest, when, by an accident, by a coincidence, as the defendants claim, they happened^{ed} to be in the same court room in which the men who were caught in the automobile, with the complainant's property, were being arraigned before the Magistrate.

Now, you see, there is an issue of fact that gives a reason for the existence of the jury system. How are we to determine who is telling the truth, how are we going to strike a balance between the testimony of the policemen and these defendants?

which we can penetrate into the recesses of their minds, and we have no delicately adjusted instrument that would enable us who are charged with the enforcement of the law to determine who is telling the truth.

But the law does not leave us entirely helpless in that regard. It says, "We will supply the lack of a mechanical device by the common sense and good judgment of twelve men, selected from the citizenry of the community, and we will assemble them together, men without interest in the result, men seeking only to do their duty as citizens, and we will let them determine what witness or what set of witnesses is telling the truth."

If you believe that any witness in this case has willfully testified falsely about any material point in the case, then you are at liberty to disregard his entire testimony. You may throw it out, in its entirety, if you think that any witness has deliberately testified falsely upon any material point in this case.

As to the defense of alibi, you may consider that in conjunction with all the other circumstances of the case. The rule is that, taking the whole case together, taking the evidence for the prosecution and the evidence respecting the alibi, if the jury has any reasonable doubt of the guilt of the defendants, they must acquit. If, as I have said, taking the whole case together, the evidence for the prosecution and the evidence of the alibi, you have no reasonable doubt as to the guilt of the defendants, then it is your duty to

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convict them.

It is your recollection of the testimony that must prevail. It is not what the learned counsel for the defendant says was testified to, or what the learned district attorney says was testified to; it is your recollection that prevails.

I do not see any necessity for reminding you of the testimony, or for reading any portions of it to you. It must be as fresh in your mind as it is in that of the Court. You are not to reach a verdict, gentlemen, based on any endeavor to ascertain what the Court thinks of the guilt or innocence of the defendant. The Court has no right to have an opinion on that matter at all, at this stage of the case, because whether they are guilty or innocent is a question of fact, and that is in your domain. It does not come within the province of the Court.

With the consequences of your verdict, you are not concerned, gentlemen. What happens after your verdict is rendered must be of no moment to you. That is the responsibility of the Court, a responsibility which the Court is unwilling to share with the jury. Your province is simply to do exact justice to both sides of this case; neither more nor less than that.

Your verdict will be guilty of burglary in the third degree, or guilty of grand larceny in the first degree, or guilty of burglary in the third degree and grand larceny in the first degree, or not guilty.

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Now, in order that you may thoroughly understand what the law says constitutes those crimes, I will read to you the definition of burglary in the third degree as defined by the law:

"A person who, with intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building, is guilty of burglary in the third degree."

The word "break" is defined in the statute as the breaking or violently detaching of any part, internal or external, of a building, or the opening, for the purpose of entering therein, by any means whatever, any outer door of a building, or any apartment, or set of apartments, or any window, shutter, scuttle or other thing used for covering or closing and opening thereto, or which gives passage from one part thereof to another.

If a door is locked, and a man, with intent to commit a crime, opens that door, the law says that is a sufficient breaking; and, if he crosses the threshold, it is a sufficient entering to constitute the breaking and entering which the law requires to constitute burglary.

The complainant testified that, when he left his place of business, the night preceding, he locked the door, and that, when he next came to his premises, the lock was broken, and a new lock, a police lock, was in its place. If you believe the complaining witness's testimony, there is evidence that you may consider of the breaking of the premises of the complainant.

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So that you may understand why the indictment names burglary in the third degree instead of burglary in the first or second degree, let me indicate to you that the essential elements of burglary in the first degree are the entering of a dwelling house in the night time, with the intention to commit a crime, when the person accused of burglary in the first degree is armed with a dangerous weapon, or is accompanied by an accomplice. Burglary in the second degree is committed by one who enters a dwelling house, in which at the time there is a human being, but not necessarily in the night time. That is burglary in the second degree.

These premises, not being a dwelling house, but a business building, brings the crime, if a crime was committed, into the grade of burglary in the third degree, which is, as I have defined to you, breaking and entering a building, not a dwelling house, with the intention of committing a crime therein.

I have stated to you that your verdict may be guilty of burglary in the third degree, or it may be guilty of grand larceny in the first degree, or it may be guilty of both the crimes, or not guilty.

Larceny is defined, the charge here being larceny in the first degree, as being committed by a person who takes from the possession of the true owner, or any other person, any property, steals such property, and is guilty of larceny; and grand larceny in the first degree is committed by one who

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steals property of the value of more than five hundred dollars. The complainant testified here that the property in question was worth more than five hundred dollars, the property that was taken from his premises.

So those are the elements of the crimes that are charged in this indictment. Be not confused as to the form your verdict may take. You may find the defendants guilty of burglary in the third degree, or you may find them guilty of grand larceny in the first degree, or you may find them guilty of burglary in the third degree and grand larceny in the first degree, both together, or you may find them not guilty.

Are there any requests to charge?

MR. ROSENBERG: Well, I would like to except to that portion of your Honor's charge where you submit to the jury their right to find the defendants guilty, under this indictment, of burglary and larceny.

And I also except to that portion of your Honor's charge wherein you charge the jury on the subject that the jury may disregard the testimony of any witness who, they find, has testified falsely, and I ask your Honor to charge--

THE COURT: No. Just a moment. I did not so charge. I said that the jury may disregard the testimony of any witness, who they believe, has wilfully testified falsely as to any material particular of this case.

MR. ROSENBERG: Then, so far as that is concerned, I don't except. But may I ask your Honor to charge in connection with that that the jury are not bound to disregard

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the testimony of any witness who, they may find, had testified falsely on a material fact, but that they may, nevertheless, believe such witness, and the testimony of such witness, on matters which they believe to be true, even though a witness may have testified falsely on a material fact?

THE COURT: Yes, I so charge. You are not bound, gentlemen, to disregard the testimony of any witness that you may believe has testified falsely on a material matter; you may or may not, just as you see fit. Is that all?

MR. ROSENBERG: Yes, sir, that is all.

THE COURT: Gentlemen, the case is in your hands.

(The jury retired at 5:20 P.M., and returned to the court room at 5:40 P.M., finding the defendants guilty of burglary in the third degree and grand larceny in the first degree)

MR. ROSENBERG: May the motions be reserved, your Honor?

THE COURT: Yes. Will Friday, the 16th, be satisfactory for sentence?

MR. ROSENBERG: Yes, sir. And may I reserve all motions to set aside the verdict until that day?

THE COURT: Yes, I have already indicated that.

I hereby certify that the foregoing is an accurate transcript of the stenographic minutes of the entire proceedings in the trial of the case of The People vs. Abraham Simon & S. Bender.
Jan 6th, 1921.
Edw. J. Beaud
Official Stenographer

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