

START
1769
CASE

October 23rd, 1913

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK,
-against-
HENRY MOORE, Indicted with James Walsh,
-----X

Before:-
HON. WARREN W. FOSTER J and a Jury.

#2023

New York, Tuesday, October 21st, 1913.

THE DEFENDANT IS INDICTED FOR MURDER IN THE FIRST DEGREE.
INDICTMENT FILED FEBRUARY 19TH, 1913.

Appearances:-

Isidor Wasservogel, Esq., Assistant District Attorney for the people.

A. Harowitz, Esq., for the defendant.

(A jury is duly examined on the voirdere and sworn)

(The Court then admonished the jury, in accordance with Section 415 of the Code of Criminal Procedure, and excused the Jury until Thursday, October 23rd, 1913, at 10:30 A.M.)

New York, Thursday, October 23rd, 1913.

TRIAL CONTINUED.

Appearances :-

Isidor Wasservogel, Esq., and

Lucien A. Breckenridge, Esq., Assistant District Attorneys, for the People.

A Harowitz, Esq., for the defendant.

(By order of the Court, all witnesses in both sides are excluded from the Court room)

THE PEOPLE'S CASE.

Mr. Breckenridge opened the case to the jury on behalf of the people, as follows:

If your Honor pleases, Mr. Foreman, and each of you gentlemen of the jury:

On the night of December 10th, 1911, at about 10:20 P.M., the body of the deceased, Joseph Madden, was found in premises 403 West Thirty-sixth Street, in this City and County, suffering from gun shot wounds in the abdomen and back. He was taken to the New York hospital, at which place he died on the 11th of December, 1911, at about 3:50 o'clock in the morning.

On the 19th of December of that year, at an inquest before a coroner's jury, three men were held for the grand jury.

On the 15th of February of 1912, the grand jury of this County indicted the defendant, Henry Moore, together with one James Walsh, for the murder of Joseph Madden.

Later, and on the 31st day of July of this year, at Calvary Cemetery, the defendant was arrested by members of the Municipal Police Department.

The facts as they appear show that on the night of December 10th, 1911, at the premises 403 West Thirty-sixth Street, in this City and County, the Winnoa Social Club gave a dance. At that dance were a number of people from the neighborhood, including a number of witnesses for the people in this prosecution, the defendant, Henry Moore, now at the bar, and the defendant, James Walsh who is not yet arrested.

In the course of the dance, there was a disturbance in the dance hall. A man was put out for drawing a gun, and the defendant went out with him.

About half an hour later, this man Walsh, accompanied by the defendant and another man as yet unidentified, returned to the dance hall, and the door tender said to Walsh, "you can't come in here", and he said, "I can't, eh?", and drew a gun, a revolver.

The deceased, Madden, made an effort to prevent the use of the gun, and Walsh fired point blank at the deceased, the bullet striking him in the abdomen.

At this time, the defendant, Moore, was seen at the deceased's back. The witnesses say that he pulled the trigger of his gun, but that it did not explode.

After Walsh fired his shot, the deceased turned, falling, and the defendant, Moore, pointed his gun again and shot. The gun discharged, the bullet striking the deceased in the abdomen. The deceased fell to the ground. The defendant and his companions ran away, and were not seen again until the arrest, on the 31st of July, of this year.

Now, gentlemen, on showing you these facts, and all the circumstances of the case, the people will ask you for a verdict of murder in its first degree.

WALTER H. VOLCKENING; called as a witness on behalf of the people, being first duly sworn, testified as follows:-
DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your name?

A Walter H. Volckening.

Q Where do you live?

A 116 Decatur Street, Brooklyn.

Q What is your business, please?

A Architect.

Q And you have been such for some time?

A Yes, sir.

Q Do you recognize this diagram which I show you? (showing diagram to witness)

A I do.

Q Was that made by you?

A It was.

Q And what does it represent?

A It represents the entrance hall, staircase hall and the ante rooms into the two meeting rooms at premises 403 West Thirty-sixth Street.

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Q And it is a correct representation of the premises?

A It is a correct representation of the premises.

MR. WASSERVOGEL: I offer it in evidence. (Received in evidence and marked People's Exhibit No. 1 of this date).

OTTO H. SCEULTZE, Coroner's Physician, called as a witness on behalf of the People, being first duly affirmed, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Doctor Schultze, you are one of the Coroner's Physicians of the Borough of Manhattan?

A Yes, sir.

Q And have been for how long?

A Since the summer, 1902.

Q And since that time have you had occasion to perform autopsies at different times?

A I have.

Q Very frequently?

A Yes, sir.

Q Altogether, how many autopsies can you say that you performed?

A over 5,000.

Q Did you, on or about December 11, perform an autopsy on the body of one Joseph Larkin, otherwise known as Joseph Madden?

A I did.

Q And where was this autopsy performed?

A At the New York Hospital, New York City.

Q And will you tell us the conditions found by you?

A There were two perforating bullet wounds of the abdomen, one located two and one-half Inches above the navel and one into the right of the middle line. This wound was round, measured three-sixteenths of an inch in diameter and had a margin that was bruised, much with powder and speckled with imbedded powder grains, the diameter of which was seventh-sixteenths of an inch. The wound was surrounded by an area of burned skin measuring one and one-half inches transverse and one and three-quarters Inches vertical. The track of the bullet passed through the margin of the liver, and the junction of small intestines to stomach. The bullet was free, in the abdominal cavity, The other bullet wound was lower, four and one-half inches to the right of the middle line, and one-half inch below the margin of the chest, below the pit of the cartilage of the ninth rib, on the right side. That wound measured one-quarter of an inch vertical and three-eighths of an inch transverse. Its lower margin was confused to the extent of a sixteenth of an inch, and its upper margin to the extent of a quarter of an inch. The track of that bullet passed through the liver, through the small intestines in three places, through the lower margin of the spleen and the left margin of the left kidney, and the bullet was found against the crest of the hip bone, two and one-half inches behind its anterior point. I have those bullets with me now. In addition, the right ring finger had been amputated, and

the back of the right hand between the fourth and fifth fingers corresponding to that location showed a wound that measured a quarter of an inch vertical and an eighth of an inch transverse. These are the two bullets that I took out of the abdomen (producing same).

MR. WASSKRVOGEL: These bullets are offered in evidence.

(Bullets received in evidence and marked, respectively, People's Exhibit No. 2 and People's Exhibit No. 3 of this date).

THE WITNESS: In addition, there was a scratch half an inch long on the right side of his forehead, and a wound three-quarters of an inch long near the angle of the jaw, on the right side, that wound merely passing through the skin.

Q Can you indicate upon your own body the relative position of the bullets? A Yes, sir.

Q Stand up, please, and show the jury?

A The end of the breast bone is here (indicating on person), the navel is here. One bullet, the one I first described, was two and one-half inches above the navel and half an inch to the right of the middle line up here (witness indicates on his own person). The other bullet was four and one-half inches to the right of the middle line and a half inch below the margin of the chest, the end the cartilage of the ninth rib.

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Here are the two points (witness indicates on his own person). And the left ring finger was missing -- the right ring finger I should say, not the left.

Q The points indicated by you, are they the points of entrance?

A Of entrance, yes, sir.

Q Now, you said something before about the presence of powder grains and of burned skin. Have they any significance?

A They have.

Q What do they indicate? A They indicate that the first wound described was delivered with the middle of the barrel at or immediately near the contact with the body.

Q Now, from the conditions found by you, what in your opinion would you say was the cause of death?

A Bullet wounds of the liver, small intestine, spleen and kidney.

Q Was the body identified to you by someone, Doctor?

A It was.

Q By whom, do you recall?

A It was identified by the house surgeon, Doctor Cowen, and also by Matthew J. Gilligan, of the 22nd Precinct.

Q A police officer?

A Shield No. 4,801.

MR. WASSERVOGKL: Cross examine.

CROSS EXAMINATION BY MR. HAROWITZ:

Q Doctor, from the examination of the wounds you made and the description you have just given, could you tell the jury the course of the bullets after they entered the body?

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A Yes, sir.

Q What were they?

A The course of the bullets that entered two and one-half inches above the navel and an inch to the right of the middle line was directly backward, with a slight inclination inward toward the middle line and very slightly downward.

Q Did you say the course was downward after it entered the body?

A That refers to the standing position, indicated thus (witness illustrates).

Q How about the other wound?

A The other wound, the course was through the liver, the small intestine, left spleen and kidney, and the bullet was found here. I indicate that thus (witness illustrates).

Q They were both downward courses?

A This one almost directly back ward, just the slightest tilt downward. This was more appreciably downward (illustrating).

Q Now, could you state which bullet wound caused death?

A Both.

MR. WASSESRVOGEL: Or either?

THE WITNESS: Or either, yes, sir.

Q Either one of them might have caused death?

A Yes.

Q And from your examination you could not tell which one entered the body first, could you, Doctor?

A No, sir.

MR. HAROWITZ: That is all.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

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Q Do you know anything about bullet, Doctor?

A Yes, sir.

Q Can you tell us whether both these bullets were fired from the same caliber gun, referring to People's Exhibits Nos. 2 and 3?

MR. HAROWITZ: I object to that. The Doctor is not an expert on bullets.

Q What do you know about guns? Can you qualify as an expert, do you think?

A I can qualify as an expert as to the effect of bullets shot from revolvers.

Q Tell us what you know about that, first?

A From the examination of bodies and from the performance of experiments with revolvers on target shot at different distances.

Q And how often have you observed such effects?

A Very frequently.

Q Can you give us an estimate, offhand?

A No.

Q More than 20 times?

A Oh, yes, indeed.

Q More than 100 times?

A Easily.

Q Can you tell us, Doctor, from the examination of these two bullets, People's Exhibits 2 and 3, whether they were both fired, from a revolver of the same calibre?

A I can.

MR. HAROWITZ: I object to that.

Q You can?

A Yes, sir.

THE COURT: There is no need of my ruling. The answer

is favorable to the defense.

MR. WASSERVOGEL: He says he can tell,

THE COURT: Oh, I understood him to say no.

MR. WASSERVOGEL: No, he can tell.

MR. HAROWITZ: Objected to on the ground this witness is not fully qualified on that.

THE COURT: The Doctor can tell us what he knows and his source of qualification. But, of course, if you have a witness who is more qualified to speak, you may call him.

MR. WASSERVOGEL: We will have a witness more qualified to speak on that. That is all with this witness.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your full name?

A Edward John Larkin.

Q Where do you live?

A 306 West 127th Street.

Q What is your business, young man?

A I work for a Stock Exchange house.

Q You have got to keep your voice up; all these gentlemen want to hear you. What Stock Exchange house do you work for?

A Wardell & Adams.

Q And where is their place of business?

A 111 Broadway.

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Q How long have you worked for this firm?

A Four years.

Q And you were working for this firm on the 10th of December, 1911, were you not?

A Yes, sir.

Q Did you know Joseph Larkin?

A Yes, sir.

Q He was also known as Joseph Madden, wasn't he?

A Yes, sir.

Q Why was he known by both names?

A Well, that was his step name. His right name was Madden. His step name was Larkin.

Q That is, his stepfather's name was Larkin?

A Yes.

Q His father's name was Madden?

A Yes, sir.

Q His mother married after his father's death?

A Yes, sir.

Q Now, on the night of the 10th of December, were you present at a ball at No. 403 West 36th Street?

A Yes, sir.

Q That ball was given by whom?

A The Winnoa Social club.

Q W-i-n-n-o-a?

A Yes, sir.

Q And 403 West 36th Street, is in the County of New York, of course?

A Yes, sir.

Q What time did you arrive there?

A I should say about half past seven.

Q And who else was there? Many people that you knew?

A Well, not at the time I was there. I want to open up the hall.

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Q And what were you doing?

A Collecting tickets at the door.

Q You were at the door collecting tickets?

A Yes, sir.

Q And who was standing with you at that time? Anybody?

A Oh, several; there were several people there.

Q Could you name the name of any one person?

A Mr. Gardner.

Q Mr. Gardner?

A Yes.

Q Now, did you that night see this defendant, Henry Moore?

A Yes, sir.

Q When did you first see the defendant, at about what time?

A 8:30.

Q When you arrived at the hall was your brother there?

A No, sir.

Q He came later?

A Yes, sir.

Q Did he come before Henry Moore arrived, or after?

A After.

Q After Henry Moore arrived?

A Yes, sir.

Q And did Henry Moore say anything when he arrived in the hall as he passed you at the door?

A He said there was several tickets he paid for coming in later.

Q What is that?

A He said there would be several tickets come in later which he paid for, later on.

Q He said there were several tickets that he did pay for, and the people were coming later on?

A Yes, sir.

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Q And did you say anything?

A I said "All right".

Q Well, did you see him again later in the evening?

A Well, he passed in and out several times, with several others.

Q He and several others passed in and out several times; is that it?

A Yes, sir.

Q Well, did you have a talk with him again that evening?

A No, sir.

Q Did you see him again later in the evening?

A Yes.

Q At about what time?

A Do you mean after he was going in and out?

Q Yes, when he finally came back?

A Well, I don't know the exact time.

Q Well, about what time?

A I should say nine o'clock.

Q And did he come in alone?

A No, he come in with several others.

Q The last time he came in do you know with whom he arrived?

A Well, one of them was James Walsh, and I don't know who the others were.

Q James Walsh is this defendant's co-defendant, the man who has not yet been arrested, is that It?

A Yes, sir.

Q And did he speak to you at that time?

A No, sir.

Q Did you see where they went?

A You mean at the time of the shooting?

Q At the last time, yes?

A My brother was Just going

up and he met him on the top of the stairs, and they started a melee, and Walsh placed a revolver against his stomach and fired once, and I don't know whether it hit him in the stomach or in the hand, because he got shot in the hand and he got shot in the stomach, and he fired again, and the second time he fired he wheeled around, and before he wheeled around more placed a revolver against his back pulled the trigger a couple of times, and it didn't go off, and after the second shot my brother turned around to the left and Moore fired one into his stomach.

Q Will you just indicate one of these men as Walsh and the other as Moore (indicating court officers)?

A Yes, sir.

Q Show us the position in which your brother was with respect to both Walsh and Moore. Now, which of these men is Walsh?

A Right here (witness illustrates with court officers).

Q This man is Walsh?

A Yes, sir.

Q Was he shorter than Moore?

A They were just about the same size.

Q This man is Walsh, and the other man is Moore?

A No, this is Walsh and this is ray brother.

Q And you take the place of Moore?

A Yes, sir. He was on this stand and he placed the revolver against his left side.

Q Was that the position in which you first observed these three men?

A They were closer together, and I think from the way I seen, I couldn't see through his back, that he was trying to take the revolver off him.

Q Who was?

A My brother.

Q Your brother was trying to take a revolver from which one?

A From Walsh.

Q And the next thing you saw?

A Was a shot fired.

Q A shot was fired?

A Yes, sir.

Q And you say that shot struck your brother?

A Yes.

Q This is your brother here?

A Yes, sir.

MR. WASSERVOGEL: The person representing the deceased faces the person representing Walsh, and Moore is standing to the left of the deceased.

Q Now, what is the next thing that was done, Larkin?

A Moore placed the revolver against the left side of my brother, and he pulled the trigger several times, and it did not go off, and then Moore -- Walsh fired another shot, and it must have hit him in the stomach, and he wheeled around.

Q Show us how he wheeled around?

A He staggered, and Moore fired one into his stomach, and he ran downstairs then.

Q Who ran downstairs?

A Moore.

Q Moore ran downstairs?

A Yes, sir.

Q Did you see him again after that?

A Not until the present time.

Q Not until the present time?

A No, sir.

Q He was not arrested then, was he?

A No, sir.

Q He has only recently been arrested?

A Yes, sir.

Q Your brother did not have a revolver, did he?

A No.

Q Do you know anything of a disturbance early in the evening, in the hall?

A When I was on the door, there was quite a large crowd came out in a hurry, and I went inside to inquire, and someone said, James Walsh said.---

MR. HAROWITZ: objected to.

Q What did you yourself see?

A I went inside and seen several people had James Walsh amongst them, Mr. Cunningham, the owner of the hall, he ejected him from the hall, and he was gone about half an hour when he came back with Moore and several others, and they started in to shoot.

Q That is, Walsh came back with Moore and several others?

A Yes, sir.

Q And then the shooting took place?

A Occurred.

Q You yourself did not see Moore go out with Walsh, did you?

A Before the shooting.

Q Before the shooting, did you?

A I didn't see Moore go out. Quite a large crowd went out, everybody ran out.

Q Yes, before the shooting?

A Yes, sir.

MR. WASSERVOGEL: You may cross examine.

CROSS EXAMINATION BY MR. HAROWITZ:

Q You are a half brother of Joseph Madden?

A Yes, sir.

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The man who was shot?

A Yes, sir

Q Do you know Walsh?

A Yes, sir.

Q How long have you known Walsh?

A Oh, I have known Walsh several years.

Q He was a member of the Winnoa Club, wasn't he?

A Yes.

Q The same club of which you were a member?

A Yes.

Q And was Joe Madden a member of that club?

A No.

Q You tell this jury that this ball that was run that night was run by the Winnoa Social Club?

A Yes, sir.

Q How many brothers have you besides the one that was killed?

A One.

Q What is his name?

A Richard.

Q Was he there that night?

A No, sir.

Q Where was he?

A In the Tombs.

Q Wasn't this ball run by you as a benefit for your brother in the Tombs?

A It was run under the name of the Winnoa Social Club.

Q As a benefit for your brother in the Tombs?

A Yes.

Q Charged with robbery?

A Yes, sir.

Q Where is he now?

A Up in Sing Sing.

MR. WASSERVOGEL: That is objected to.

It makes no difference where he is?

THIS COURT: He may answer.

Q And, as a matter of fact, did you, Gardner and Shore

and some of the other members of the social club want around that neighborhood and compelled people to buy tickets for that ball?

A Didn't compel them.

Q What?

A Didn't compel them.

Q You said you were a member of that club?

A Yes, sir.

Q Aren't some of the members of that club known as the Duster Gang?

A I don't know.

Q You don't know?

A No, sir.

Q You tell this jury that you don't know whether that Winnoa Social Club is otherwise known as the Duster Gang of the West Side?

A No, sir.

Q What?

A No, sir.

Q You don't know, or do you say "no"?

A I don't know.

Q You don't know?

A No.

Q Moore was not a member of that club, was he?

A No.

Q I mean this defendant?

A I understand.

Q How long had you known Moore before that night?

A I got introduced to him on the afternoon of the occurrence.

Q On that same day?

A Yes, sir.

Q As a matter of fact, Larkin, isn't it a fact you never saw Moore in your life until the night of the shooting?

A I seen him in the afternoon, and got introduced to him.

Q That same afternoon, you saw him?

A Yes, sir.

Q How long did you speak to him?

A Well, James Walsh introduced me; he says, "This is that guy's brother".

He says,

"Take a good look at him".

Q How long did you look at him?

A We were talking there for about half an hour.

Q With Moore?

A Yes, sir.

Q That was the only time you saw him in your life?

A That was the only time I ever seen him.

Q Before the shooting?

A Yes, sir.

Q Now, you remember -- you testified before the Coroner didn't you?

A Yes, sir.

Q At that time you accused a man by the name of Emil Sauter as the man who shot your brother?

A He was not accused of shooting him. He was accused of stabbing him.

Q Of stabbing him?

A Yes, sir.

Q And you were a witness against him?

A Yes, sir.

Q And you positively identified him?

A Not positively.

Q Didn't you swear before the coroner's jury that Emil Sauter was there that night?

A I didn't swear. I said, he looked like the man.

Q Do you remember this question being put to you: "Q Is that the man you saw with Walsh and Moore December 10th? A I am pretty sure". Do you remember that?

A I don't quite remember it, but if it is down there I guess I said it.

Q Do you remember the following question: "Q You were asked when you testified in the very beginning of this case, that you remembered, and you said, I am not positive that was the man"?

A Yes, sir.

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Q "A I didn't say I was not positive, I said, I was very sure". Do you remember that?

A I don't remember that far back.

Q You don't?

A I don't remember that far back.

Q Your memory is not better to-day than it was then, is it?

A What is that?

Q Your memory as to this occurrence, is not any better to-day than it was at that time, is it?

A NO, sir.

Q What?

A I don't think so.

Q You were there in the Coroner's Court, to identify Emil Sauter as one of the three?

A He got identified up in the 54th Street Court.

Q You did identify him?

A I said it looked like the man.

Q But before the Coroner's Jury you swore you were very sure it was the man, didn't you?

A I might have.

Q What?

A I might have.

Q Do you remember this question being put to you, Page 14: "Q Wouldn't you be less positive in your identification if I brought half a dozen here to swear that he was half a mile away?"

MR. WASSERVOGEL: That is, Sauter was.

MR. HAROWITZ: Yes, I am speaking of Sauter.

Q (Continuing) And your answer was, "No". Do you remember that?

A Not quite.

Q I read the following questions: "Q (It would not make any difference? A It makes no difference how many you bring here. Q If there were 500 that swears he was half a mile away, would that make any difference to you? A No." Do you remember that?

A Yes, sir.

Q And those were your answers?

A Yes, sir.

Q You were very positive, then, before the Coroner's Jury, almost a week or two after the shooting that a man who was there charged with the shooting --

MR. WASSERVOGEL: Not the shooting -- stabbing.

Q (Continuing) Stabbing with Walsh and Moore was the man weren't you?

A I was not quite sure.

Q It afterwards turned out that he was not the man, didn't it?

A Yes, sir.

Q And he was discharged?

A Yes, sir.

Q Now, you tell the jury that you saw Moore the first time in your life that same afternoon, when you sold him some tickets, is that it?

A I didn't sell him some tickets, then.

Q Well, then you spoke about some tickets?

A Yes, sir.

Q And then you say you were there selling tickets at his affair run for the benefit of your brother who was in the Tombs?

A Yes, sir.

Q And there were crowds of people going in, weren't there?

A Yes, sir.

Q And you tell this jury now that you remember the

faces and name of every man that entered that hall as you took tickets?

A I didn't say I could say the name of every man.

Q How do you remember Moore came there at half past eight?

A On account of what Walsh said to Moore over in that dancehall, "Take a good look at him". That is the reason I looked at everybody that came in with Walsh.

Q Did you testify to that before the Coroner's Jury?

A No, sir. they didn't ask me.

Q The Coroner's Inquest was held on December 19, nine days after the shooting?

A I don't remember the date.

Q Nine days after the shooting, and you testified at length there, didn't you?

A What is that?

Q You went pretty much into detail there before the Coroner's Jury?

A Yes, sir.

Q And your memory, then, nine days after the shooting, was certainly better than it is to-day, almost two years after the shooting, wasn't it?

A I don't know.

Q What?

A I don't know about that.

Q You don't know?

A No.

Q I want to find out about that. Have you got a good memory?

A Yes, sir.

Q And is your memory better to-day than it was two years ago?

A I can't tell that, whether my memory is better today than it was then.

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Q What?

A I can't tell

Q You can't tell that?

A No, sir.

Q Why didn't you tell the Coroner's Jury, then, that you met Moore that same afternoon, that you had spoken to him for half an hour, and that Walsh said to you "Take a good look at him".

A I wasn't asked. Maybe, I didn't think about it.

Q How is it you happened to think about it now? Anybody ask you the question?

A I have more time to think about it than I did then.

Q You have been thinking over this thing now for almost two years?

A Yes, sir.

Q Trying to think a whole lot of things about Moore, didn't you?

A I didn't think no more about him than I did then.

Q Now, what time did you say Walsh got there?

A Eight thirty.

Q And who was with him then?

A Moore was one.

Q Who else?

A Several others; I don't know who they were.

Q A big crowd?

A Yes, sir.

Q And they all went inside?

A Yes, sir.

Q Paid their tickets the same as any one else?

A Yes, sir, the tickets were paid for.

Q And then they went inside; when did they come out?

A They came out several times.

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Q Well, there is no barroom upstairs in that hall?

A No, sir.

Q If anybody in that dance hall wanted a drink he would have to go out and go on the corner?

A Yes, sir.

Q And most of the dancers there did that, didn't they?

A Yes, sir.

Q And you say amongst the crowd that did that was Moore, Walsh and several others?

A Yes, sir.

Q Now, Mr. Larkin, let us hear again what was the first thing that attracted your attention to that shooting?

A I seen them all coming up and I seen a crowd around my brother.

Q Where were you at that time?

A I should say over here to the railing away (indicating).

Q Weren't you downstairs taking tickets?

A Upstairs.

Q Where were you standing earlier in the evening?

A At the head of the stairs.

Q Upstairs?

A Yes, sir.

Q How many floors up?

A Two stories.

Q Two floors up?

A Yes, sir.

Q This happened at what time, you say?

A 10:30.

Q And weren't you in the hall dancing at that time?

A No, sir.

Q You were not in the hall at any time that night before the shooting?

A I went in when Walsh said they pulled a revolver.

Q What time was that?

A About ten o'clock.

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Q You didn't see that, though?

A No, sir.

Q What was the first thing that happened after Walsh got up there?

A Oh, nothing just --

Q I mean, at half past ten at the time of this fight?

A What happened?

Q Yes.

A Walsh pulled a revolver and Moore pulled a revolver.

Q Walsh pulled a revolver and Moore pulled a revolver?

A Yes sir.

Q Is that what you say now?

A Yes, sir.

Q Two separate revolvers?

A Each one had one.

Q Did you testify to that before the Coroner's Court?

A No, sir, but I said they each had a revolver.

Q Did you testify to that before the Coroner's Court? "Yes" or "no".

MR. WASSERVOGEL: Let him finish that answer.

MR. HAROWITZ: I am asking the witness.

MR. WASSERVOGEL: I object to the counsel interrupting the witness while he is giving an answer.

MR. HAROWITZ: My question calls for an answer "Yes" or "No".

THE COURT: If you ask a question and the witness starts to answer, you must let him complete his answer. Now, proceed.

THE WITNESS: What is the question.

Q The question is, did you testify to that before the Cor-

oner's Court? "Yes" or "No".

A I testified that each one of them shot him.

Q Did you testify before the Coroner's Court that Moore pulled a revolver from his own pocket?

A Yes, sir.

Q "Yes" or "No".

A Yes, sir.

Q Did you say before the Coroner's Jury that after Walsh had fired two or three shots, that Moore grabbed his revolver and put it up against the back of your brother?

A Moore had his own revolver, and placed it against my brother's back.

Q Did you say in the Coroner's Court that Moore grabbed Walsh's revolver? A No, sir.

Q You did not say that?

A NO, sir.

Q You are positive of that, are you?

A Positive, yes, sir.

Q Do you remember these questions and answers being put to you and the answers made on the Coroner's inquest, in the Coroner's court, on page 5: "Q Where did he shoot him?" Speaking of Walsh, "A Well, it was so close, I don't know whether it was in the heart, or in the stomach, so close together they were," Do you remember that?

A Yes, sir.

Q Do you remember the next question: "Q Did you see him fire? A I couldn't see no flash. Q Did you hear the sound of the shot? A Yes." Do you remember that?

A Yes, sir.

Q "Q Did you see the gun in his hand? A Yes," Then, the next question, "Q What did the other man do? A Joseph

Madden"-- that is the dead man?

A Yes, sir.

Q (Continuing) "Tried to grab the revolver, and Moore came behind him and placed the revolver behind his back." Do you remember that?

A Yes, sir.

Q You didn't say then that Moore took another revolver from his own pocket, did you?

A He had one in his hand.

Q What did you mean by saying Joseph Madden tried to grab the revolver, and Moore came behind him and placed the revolver against his back?

A He tried to grab the revolver from Walsh.

Q And Moore placed the revolver against his back?

A Yes.

Q The revolver refers to the same revolver?

A It refers to the revolver that he had in his hand.

Q That who had in his hand?

A That Moore had in his hand.

Q Did you at any time say that Moore had a revolver in his hand?

A Yes, sir.

Q When did Moore, as you say, fire the shot in the stomach? Was it before he placed the revolver against his back and pulled the trigger or after?

A After.

Q First he fired the shot?

A Yes, sir, he pulled the trigger several times, and it didn't go off. Then he fired the shot.

Q Didn't you testify on your direct examination first he fired the shot in the stomach and as he turned around he

Pulled the trigger three or four times and it didn't go off?

A No, sir.

Q You didn't say that on your direct?

A No, sir.

Q You are positive of that, are you?

A Positive.

Q Let me read this: "Q About half an hour after that what occurred?

A Walsh aid Moore's party came up again. We stopped them at the door." Do you remember that?

A Yes, sir.

Q "Q Who was in the party besides Walsh and Moore? A I think the prisoner", speaking of Sauter?

A Yes, sir.

Q "Q What happened when they came up? A They came up, and Thomas Shore asked them not to go in, and Walsh punched him and this big fellow punched him." Do you remember that?

A Yes, sir.

Q "Q Which big fellow? A Sauter. Do you remember that?

A Yes, sir.

Q "Q Did he punch him? A Yes. Q Tell me what occurred after that? A Then Joseph Madden went there". That is the man that was killed?

A Yes, sir.

Q "Q That is the man who is now dead?

A Yes, he asked and him not to have any trouble and as soon as he did Walsh pulled the revolver and shot him".

A Yes, sir.

Q Do you remember that?

A Yes, sir.

Q "Where did he shoot him? A Well, it was so close, I don't remember whether it was in the heart or in the stomach.

Q Now, what did the other man do? A Joseph Madden tried to grab the revolver, and Moore came behind him and placed the revolver behind his back." Do you remember that?

A Yes, sir.

Q "Q What did Moore do after he placed the revolver behind the deceased's back? A Pulled the trigger three or four times. Q Did it go off? A No." Do you remember that?

A Yes, sir.

Q "Q What happened after that? A The first man fired another shot?"

A Yes, sir, referring to Walsh.

Q What?

A Referring to Walsh, yes.

Q "Q Where did he have his gun pointed at the deceased at that time? A His stomach; they were close together." Do you remember that?

A Yes, sir.

Q The first two shots Walsh fired; is that it?

A Yes.

Q And which way was the gun pointed at?

A His stomach.

Q Both of them fired at his stomach?

A Yes, sir.

Q Now, I have read you your testimony that you gave before the Coroner's Court.

MR. WASSERVOGEL: Not all of it.

MR. HAROWITZ: Most of it.

MR. WASSERVOGEL: No, you stopped short. You didn't read it all.

MR. HAROWITZ: I mean in reference to Moore.

MR. WASSERVOGEL: No, there is one question on page 6, which you did not read, which I will read later on.

MR. HAROWITZ: Which one is that?

MR. WASSERVOGEL: "Q What did Moore do?"

Q "Q What did Moore do? A He fired the shot in the stomach. Q Did you see that shot fired? A Yes." Now, is there anything in the testimony I read where you testified at the Coroner's Court where you said that Moore pulled the gun from his own pocket?

A I don't catch that.

Q Is there anything in your testimony at the Coroner's inquest which you can show to this jury wherein you testified that Moore pulled a revolver from his own pocket?

A No, sir.

Q Wasn't your memory better at that time than it is to-day?

A No, sir.

Q It is not?

A No, sir.

Q You think your memory to-day, two years after the shooting, is better than it was nine days after the shooting?

A Yes.

Q What? A Yes, sir.

Q And you refresh your memory now, although you testified at that time that Moore grabbed the gun that was in Walsh's, hand? You now want to tell this jury that Moore pulled a gun from his own pocket?

A I said he had a gun in his hand.

Q "Q What did the other man do? A Joseph Madden tried to grab the revolver." When you say, "The revolver", you refer to the revolver in the hand of Walsh, don't you?

A Yes.

Q And in the same breath, "And Moore came behind him and placed the revolver against his back." What did you mean by that?

A Well, Moore owned the revolver; he had it in his

hand; so it was his. I referred to the gun.

Q You say you referred to what?

A I referred to the gun that he had.

Q That who had?

A That Moore had.

Q You were testifying about the gun that Walsh had?

A He had one, and so did Moore.

Q But you did not state that?

A I stated that

Q I have read the questions and answers you made?

A I answered that question four or five times now.

Q What?

A I answered that question four or five times now.

Q Answer it again?

A All right.

Q "Q Where did you see him shoot? A It was so close I don't know whether it was in the heart, or stomach, so close they were together." You were speaking of Walsh?

A Yes, sir.

Q "Q Did you see them fire? A I couldn't see the gun fired. Q Did you hear the sound of the gun? A Yes. Q Did you see the gun in his hand? A Yes." Now, you are all the time speaking about the gun in Walsh's hand. "Joseph Madden tried to grab the revolver, and Moore came behind him and placed a gun at his back". Didn't you refer to the gun in the hands of Walsh?

A No, sir.

Q You did not state Moore took a revolver from his pocket?

A He had it in his hand.

Q You did not state that?

A I stated it.

Q In the language I have just read?

A No, sir, not in the language you have Just read.

Q There is no other answer there. DO you want this jury to understand you meant that at that time?

A I want the jury to understand that Moore had a revolver against my brother's back.

Q But you didn't state it at that time?

A I stated he had a gun against his back.

Q You said, "The revolver"?

MR. WASSERVOGEL: Why should we quibble about an article "the" or "a"?

Q You said a moment ago, your memory is better now than it was two years ago?

A I didn't say it was better. I said it was just as good.

Q And yet you did not state it before the Coroner?

A I stated he had a revolver.

Q Now, Larkin, as a matter of fact, don't you know at the time of this shooting you were in that dance hall?

A I was at the head of the steps.

Q Don't you know, at the time of this shooting, you were in back of that dance hall, sitting on a bench, where people were dancing?

A I was at the head of the stairs.

Q And don't you know that the only man who saw this shooting is a man named Shore?

A I seen the shooting.

Q What?

A I seen the shooting.

Q Do you know a man named Hugh Corrigan?

A Yes, sir.

Q DO you remember, at the time of the shooting, right after the shooting, right after the shooting, Corrigan was standing by the door leading to the entrance to the hall?

A Yes, sir.

Q Do you remember that?

A I don't remember seeing him standing there.

Q And as the shooting happened, wasn't the door slammed in his face?

A I don't know.

Q You don't know?

A No, sir.

Q Didn't you come running out then from the dance hall and pass Corrigan, who was standing at the door, right after the shooting?

A Right after the shooting, I went inside to get my brother a drink of water.

Q Before the shooting, I am asking you?

A Before the shooting?

Q Weren't you in that dance hall, and as soon as the shooting started, didn't you run out and pass Corrigan at the door?

A No, sir.

Q Do you know a man named Joseph Sonner?

A Yes, sir.

Q Weren't you sitting, immediately before the shooting, in the back of the dance hall, with a piano stool in your hand, the leg from a piano in your hand?

A No, sir.

Q Did you have a piano leg in your hand that night?

A No, sir.

Q And weren't you sitting, talking to Joseph Sonner?

A No, sir.

Q Immediately before the shooting happened?

A No, sir; Sonner was not in the hall. Corrigan was in the hall. Sonner was not in the hall.

Q Where was Sonner?

A I don't know where he was.

Q How many people were in the hall?

A Four or five hundred.

Q And do you mean to tell the jury you can tell than now that Sonner was not amongst those four or five hundred?

A Sonner was not in the hall. Corrigan was in the hall.

Q You say he was not in the hall, because you did not see him, or because you know he was not in the hall?

A Because I did not see him.

Q He was there that night?

A Was he? That is news to me.

Q Sonner is one of the men you did not compel to take a ticket?

A I didn't compel anybody to take tickets.

Q You didn't compel Corrigan to take a ticket?

A No, sir. Corrigan bought a ticket off Moore.

Q This is the man you identify as Hugh Corrigan (indicating)?

A Yes, sir.

Q And that is Joseph Sonner (indicating)?

A Yes, sir.

Q Those are the individuals you refer to and I refer to?

A Yes, sir.

Q DO we understand each other now?

A Yes, sir.

Q Corrigan is the man who was at ending here (indicating)?

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A Yes, sir.

Q Do you remember him holding the crowd back?

A No, sir.

Q Immediately before the shooting?

A No, sir.

Q Kept them in the dance hall, to keep them away from where the shooting was going on?

A No, sir.

Q And that you were one of that crowd?

A No, sir.

Q Nothing like that happened?

A No, sir, I don't know what happened inside the hall.

Q And you were not sitting with this man Sonner?

A No.

Q Talking, with the foot of a piano stool in your hand, about a second before the shooting?

A No, sir.

Q Now, where had you been -- did you see Cunningham there, the owner of the hall?

A Yes, sir.

Q He was there when the shooting took place?

A Yes.

Q He saw the whole thing, didn't he?

A Yes, sir.

Q As much as you did?

A Yes, sir.

Q And he was there during the entire time?

A Yes, sir.

Q And how far away was he standing from the men who were fighting?

A He was nearer than I was.

Q Nearer than you were?

A Yes, sir.

Q He saw everything much better than you did, did he?

A Yes, sir.

Q When I say Cunningham, I refer to Patrick J. Cunningham?

A Yes, sir.

Q The owner of the hall?

A Yes, sir.

Q How many people were between you and the rest of the men there that were fighting?

A Nobody.

Q Where was Cunningham? Wasn't he standing there, in between?

A He was on the other side, on the right hand side, and I was on the left hand side.

Q Where was Shore?

A He was there, too.

Q Is Shore related to you?

A No, sir.

Q What?

A No, sir.

Q Is Gardner related to you?

A No, sir.

Q Which way was Walsh facing? Was he facing you?

A Well, he had his back up against the wall, and he was facing sideways to me.

Q That is, he was standing this way (illustrating)?

A No, sir.

Q With his back against the wall?

A Well, that was not the way the wall was.

Q Well, whichever way the wall, was?

A Not that way, right-about face.

Q This way (illustrating)?

A No, sir.

Q This way (illustrating)?

A That way.

Q That is, Walsh was standing that way?

A Yes, sir.

Q Where was Joe Madden?

A He was facing Walsh.

Q Where were you?

A On the left.

Q On the left of whom?

A Left of my brother.

Q Facing whom?

A Facing the crowd, Walsh, Moore and

my brother.

Q Where was Moore at that time?

A At his back.

Q At whose back?

A My brother's back.

Q Were you looking in the same direction as our brother was?

A No, sir.

Q Which way were you looking?

A I was standing looking this way, and they were standing that way (illustrating).

Q Here is Walsh, standing as you say, facing that way (illustrating)?

A Yes.

Q With his back against the wall?

A Yes.

Q He was backed up against the wall?

A Yes, sir.

Q Moore was where? To the left of him?

A No, sir, to the right.

Q Moore was standing here (illustrating)?

A Standing to the right and a little in front of him.

Q That is about here (illustrating)?

A No, further than that.

Q Well, here (illustrating)?

A That ain't a step.

Q Well, where?

A Down further.

Q About here (illustrating)?

A Yes.

Q Joe Madden, the dead man, where was he standing?

A In between Moore and Walsh.

Q He was about here (Illustrating)?

A Yes, sir.

Q Where were you?

A On the left of him, of my brother.

Q And in relation to Moore?

A On the left of Moore.

Q This side of Moore (illustrating)?

A No, sir. the other side.

Q The other side?

A Yes, sir.

Q And were you behind or in front, of Moore?

A About even.

Q About in line with Moore?

A Yes, sir.

Q And you were facing the same as Madden was?

A No, sir.

Q You were looking at Walsh?

A No, Sir.

Q You were looking in the same direction as Moore was?

A No.

Q Well, which way were you looking?

A Bring up the officers, and I will describe it to you.

Q No, you describe it as I ask you?

A They were looking east, and I was looking south.

Q Were you -- in other words, you had a side view of Moore; you were in a parallel line with Moore?

A Well, he walked up; first I seen his front face, before he placed the revolver against my brother's back.

Q And how long did that take?

A Oh, a second.

Q Just a flash?

A Yes, sir; I seen him good enough to know.

Q Was it dark in the hallway?

A No, sir.

Q What?

A No, sir.

Q How many lights were there?

A I don't know how many lights, it was illuminated.

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Q Was it very light in the hallway?

A Yes, sir.

Q This was not in the dance hall?

A No, sir.

Q This was in the room leading to the dance hall? In other words, as you go up to the top of the stairs, there is a little entrance?

A Yes, sir.

Q A sort of vestibule?

A Yes, sir.

Q And that leads you into the hall?

A Yes, sir.

Q Now, this whole thing had been in the vestibule?

A No, sir.

Q At the foot of the stairs?

A At the head of the stairs.

Q Well, that leads into the vestibule?

A Yes, sir.

Q Not where the people were dancing?

A No, sir.

Q And where is the light situated in those premises?

A I don't know where the lights were situated.

Q Was it downstairs, or in the vestibule?

A In the ceiling.

Q Which part of the ceiling? Was it near the stairs, or was it in the vestibule, or was it downstairs?

A They were in the hall.

Q You were excited, of course, weren't you?

A Not before the shooting.

Q As soon as the shooting started?

A Yes, sir.

Q You describe in detail to this jury how many shots were fired and how they were fired, and everything in particular?

A Yes, sir.

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Q Took good notice of that?

A Yes, sir.

Q Although you were excited?

A Yes, sir.

Q Now, you got excited immediately, as soon as you saw the gun in Walsh's hand, didn't you?

A Just as soon as I heard the shot.

Q Walsh fired three shots, didn't he?

A Four shots.

Q One after the other, or first three?

A No, he did not fire them one after another, he fired one, and then another one, and then he fired one as he was going down the stairs.

Q And you stood there, looking at him?

A Yes, sir.

Q Didn't run away?

A No, sir.

Q Didn't get scared?

A Got scared enough.

Q You have been used to gun shots?

A That is the first time I seen anybody shot.

Q The first time you had seen anybody shot?

A Yes, sir.

Q Do you know a man named Sullivan?

A No, sir.

Q Do you know a man by the name of Sullivan?

A What Sullivan are you referring to?

Q Did you shoot a man by the name of Sullivan here six or seven months ago?

A No, sir.

Q What?

A No, sir.

Q Didn't you and two others shoot a man by the name of Sullivan?

A No, sir.

Q Where have you been in the last few months?

A Work-

ing.

Q I mean, outside of that?

A I have been around the neighborhood.

Q Which neighborhood?

A Well, I have moved up to Harlem now; I am staying uptown now.

Q You live in the neighborhood of 17th and 19th Streets?

A No, sir.

Q Where did you live ?

A Ninth Avenue, between 26th and 27th Streets.

Q How long did you live there?

A Seven years, I guess.

Q When did you move away from there?

A Two months ago.

Q And you have not been around there since, have you?

A I come down.

Q In the last two months?

A Yes, sir.

Q Do you know a man by the name of Otto Meyer, on Ninth Avenue?

A No, sir.

Q Didn't you cut Meyer with a knife, about two months ago, on Ninth Avenue?

A No, sir.

Q Near 18th Street?

A No, sir.

Q And didn't you keep away from that neighborhood because you knew the police were after you?

A No, sir.

Q What?

A No, sir.

Q Nothing like that happened?

A No, sir.

Q This Meyer I refer to, his first name is Otto -- Otto Meyer. Do you know a man of that name?

A No, sir.

Q Did you have any trouble with him?

A No, sir.

Q Now, according to your testimony, Walsh fired four shots, didn't he?

A Yes, sir.

Q And you say Moore only fired one?

A Yes, sir.

MR. HAROWITZ: That is all.

MR. WASSERVOGEL: I ask counsel to give me the name and address of the man Sullivan that he referred to in the cross examination of this witness, and the name and address of the man Meyer.

MR. HAROWITZ: I will have them here, Mr. Wasservogel.

MR. WASSERVOGEL: You will have them here?

MR. HAROWITZ: Yes, sir.

MR. WASSERVOGEL: That is all.

MR. HAROWITZ: That is, I will send out subpoenas for them.

MR. WASSERVOGEL: No, I want the names and addresses. I want them here. Otherwise, the questions are improper.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your full name?

A Thomas Francis Shore.

Q Where do you live?

A 140 10th Avenue.

Q What is your business?

A Chauffeur.

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Q Chauffeur?

A Yes, Air.

Q And by whom are you employed?

A By Henry Lindermeier.

Q And where is his place?

A 32 Bleecker Street.

Q "Do you remember making an affidavit in the District Attorney's office on the 25th of January, 1912?"

MR. HAROWITZ: I object to that, if your Honor please.

THE COURT: The objection is overruled.

MR. HAROWITZ: I take an exception.

Q You remember that, don't you?

A Yes, sir.

Q And you signed that affidavit at that time?

A yes, sir.

Q And this is your signature, is it? (Showing paper to witness)

A Yes, sir.

Q And you were also a witness in the coroners Court against a man named Sauter, when Sauter was arrested?

A Yes, sir.

Q And at that time, the defendant, Henry Moore, was not under arrest?

A No, sir.

Q Were you at a dance hall, at No. 403 West 36th Street, on the night of the 10th of December, 1911?

A On the 10 of December, 1911.

Q What?

A On the 10th of December, 1911.

Q Raise your voice?

A On the 10th of December, 1911.

Q And that dance was given by the Winnoa Social Club, was it not?

A Yes, sir.

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Q Were you a member of that club?

A Yes, sir. I was a member of that club

Q And did you know Joe Madden?

A Yes, sir. he was a brother-in-law of mine.

Q He was what?

A A brother-in-law of mine.

Q A brother-in-law of yours?

A Yes, sir.

Q He married your sister, or what?

A No, sir. his brother married my sister.

Q His brother married your sister?

A Yes, sir.

Q Now, what were you doing at the ball?

A Well, I was there more or less to show myself, I was there to show myself, that I was there, because it was a social ball, and I was just after coming out of the hospital, and I couldn't go Inside the hall. I had to stand outside; I was afraid somebody would bump into me; I was pretty weak at the time.

Q You were at the door, giving out tickets?

A Yes, giving out return checks.

Q And what time did you first arrive there?

A I got there about half past eight.

Q Did you take your position at the door at that time, giving out the return checks?

A No, sir.

Q When did you do that?

A That must have been about half past nine, or a Quarter to ten.

Q And how long would you say you were standing there?

A About 15 or 20 minutes.

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Q Did you know a young man named Jim Walsh?

A Yes, sir.

Q And you saw him there that night, didn't you?

A Yes.

Q Saw him come in And go out several times?

MR. HAROWITZ: Please don't lead.

Q What did you see Walsh do?

A I saw Walsh come in the hall; I saw him pay his money, came in the hall, he had same girl with him, and I saw Walsh go out, and when Walsh went out somebody said he was in a fight.

MR. HAROWITZ: Objected to.

Q You must not tell us what somebody said. You say you saw Walsh go out?

A Yes, I saw Walsh go out.

Q And did he go out alone, or with others?

A He went out, alone, when I saw him.

Q Did you see him come back?

A I seen him come back, when the shooting occurred.

Q You saw him come in and go out before that, didn't you?

A Yes, sir.

Q And you saw him go out with some people, didn't you?

A Go out with some people?

Q Yes.

MR. HAROWITZ: That is objected to.

Q Did you see him go out with anybody?

A No, sir; I think he was by himself; I didn't take any special notice. I noticed Walsh though, because I knew Walsh well.

Q Did you knew this defendant before that night?

A No, sir.

never met him.

Q Never met him before that night?

A No, sir, never saw him.

Q When did you see him for the first time?

A The first time I ever seen him, coming to court here.

Q Did you see him that night?

A No, sir.

Q What?

A That ain't the fellow I got the description of, if that is the fellow; he seemed to be a stouter fellow than this fellow, because I will tell you --

Q One thing at a time. You say you don't recognize this defendant at the present time?

A No, sir. I don't recognize him now.

Q Do you remember in the affidavit which you made on the 25th of January, 1912, about three weeks after the shooting?

A Yes, sir.

Q You said that Walsh came out with Henry Moore.

MR. HAROWITZ: Wait a minute. I object if your Honor please, to the District Attorney reading from an affidavit which is not in evidence.

MR. WASHERVOGEL: I offer it in evidence.

MR. HAROWITZ: As to what this witness had--

THE COURT: I think the question is not completed. Therefore, there is no objection which can apply.

MR. HAROWITZ: He wants to read a statement which is not in evidence.

THE COURT: I can't rule on objections, except on objec-

tions to Questions, and when there are no questions there is nothing to which you can object.

MR. HAROWITZ: I respectfully except.

Q DO you remember having stated in an affidavit which in you signed on the 25th of January, 1912, that in about ten or 15 minutes he, Walsh, came out with Henry Moore. Do you remember that?

A He came out --

MR. HAROWITZ: Wait a minute. I object to that if your Honor please.

THE COURT: The objection is overruled.

MR. HAROWITZ: I take an exception.

Q Do you remember saying that? "Yes" or "No", now?

A NO, I don't know Henry Moore.

Q Do you remember swearing to that at that time, under oath?

A I never swore that I knew Henry Moore.

Q Just look at it yourself (handing paper to witness). Read it yourself. Is it your signature?

A Yes, Sir, that is my signature.

Q Read that out loud?

A "In about ten or 15 minutes, he came out with Henry Moore; both of them were a little drunk".

MR. HAROWITZ: I object to the District Attorney asking the witness to read an affidavit signed sometime ago.

THE COURT; What is the question?

(Record read by stenographer As follows: "Q Read that out loud? A In About 10 or 15 minutes, he came out with Henry Moore: both of them were a little drunk".)

THE COURT: There is nothing to rule on. He has answered.

MR. HAROWITZ: I ask your Honor to strike the Answer from the record.

THE COURT: No, you must take your objection, at the time.

MR. HAROWITZ: I take An exception.

Q Do you remember also having sAid that you heard some one say "Here comes Walsh"? A Yes, sir.

Q You did say that?

A Yes, sir.

Q And the dead man at that time was standing near the door, wasn't he?

A Yes, sir, he was standing near the door.

Q And you walked to the head of the stairs?

A I walked to the head of the stairs.

Q And do you remember also in your affidavit saying, "And just as I got there, Walsh and Moore and a third man came upstairs"? Do you remember that?

A Yes, sir.

MR. HAROWITZ: If your Honor please, I don't want to interrupt every moment. I would like to enter a general objection to all this.

THE COURT: No, I cannot permit that. The law requires you to object to such questions, as you deem objectionable. When you do that, then I can rule. You can't

properly object to a question in advance, because I don't know whether the question is open to objection or not.

MR. HAROWITZ: I object to the question.

THE COURT: There isn't any question pending, It is answered.

MR. HAROWITZ: I move to strike out the answer.

THE COURT: No, I am not going to strike out answers, unless, of course, the answer is not responsive. You must object be times.

MR. HAROWITZ: I respectfully except.

Q Did you see the shooting?

A Yes, sir.

Q How many men did you see fire shots?

A Two men.

Q And you saw a gun in the hand of each man, did you?

A yes.

Q Did the dead man have a gun?

A No, sir.

Q Can you tell us the position of the men who were firing the shots with reference to the man who was shot?

A Walsh come up the stairs first, and this other fellow, if that was Henny Moore.

MR. HAROWITZ: Just a minute. I ask that be stricken out, this other fellow, if that was Henny Moore.

MR. WASSERVOGEL: yes, consented to.

THE COURT: Yes.

THE WITNESS: That is what I was told.

THE COURT: Never mind what you were told.

THE WITNESS: This fellow was coming up the stairs, behind Walsh, so I went out to stop Walsh and I put out my hand, And Joe jumped in front of me and said, where are you going? He says, "I Am going in there".

Q Joe was the dead man?

A Yes, Joe Madden, he was Joe, and Joe brushed him back, and as he did, this fellow behind him said to him "Go ahead for Christ's sake give it to him." So with that there was a big fellow standing on the left hand side of Rocky Walsh, he leaned over and hit me. I fell. And then the shots started to be fired. There was a gun in the fellow behind Walsh's hand, and he pulled the trigger about four times before the bullet went off; he was the last one to shoot; you could hear the gun click. I laid under Madden's feet. Madden fell over me. I couldn't get up. I was too weak; I was just after coming from an operation for appendicitis.

Q You say one was Walsh?

A I know Walsh positively:

Q And the other one you have not seen before?

A I did not know him.

Q Now, you say you can recognize him?

A No, sir. I can't recognize this fellow as the fellow.

Q You can't recognize him?

A I could recognize him if I saw the right fellow. Maybe, this may be the fellow and may be not.

Q You can't swear whether this is the man, or not?

A No.

Q But you did also say in your affidavit. "When I got up again Moore had a gun pointed towards Joe Madden. Moore fired a shot". Did you say that?

MR. HAROWITZ: I object to that Question.

THE COURT: What is the ground.

MR. HAROWITZ: The ground is he is reading from a document signed by the defendant not in the presence of the jury. He is reading from a document which is not in evidence.

MR. WASSERVOGEL: I offer it in evidence.

MR. HAROWITZ: The question is, what does the witness testify to now. Not what he signed in the District Attorney's office.

MR. WASSERVOGEL: I know, but we are taken by surprise at the testimony of this witness.

THE COURT: The objection is overruled.

MR. HAROWITZ: I take an exception.

MR. WASSERVOGEL: There may be a reason for this change.

Q (Question read by stenographer as follows: "But you did also say in your Affidavit, 'When I got up again Moore had a gun pointed towards Joe Madden. Moore fired a shot'. Did you say that)?"

A That was the last shot fired, yes, sir.

Q And you remember in the Coroner's Court --

A Yes, sir.

Q (Continuing) -- you were sworn as a witness there, were

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you not?

A Yes, sir.

Q You were under oath?

A Yes, sir.

Q And the testimony before the Coroner's Court, was taken in the month of December, wasn't it, of the same year?

A Yes, sir.

Q And you said there Moore fired the third shot, do you remember that?

A I ain't sure.

Q How is that?

A I don't remember saying Moore fired the third shot.

Q You won't swear now that you did not say it at that time, in December?

A Well, I may have said it.

Q Your memory was much better a few days after the commission of this crime than it is now "Yes" or "No"?

A Yes.

MR. WASSERVOGEL; That is all.

CROSS EXAMINATION BY MR. HAROWITZ:

Q Are you related to Eddie Larkin, the last witness in this case?

A Well, I am a brother-in-law.

Q And you are also related to the man who was killed?

A Yes, sir.

Q Now, January 25th, you signed this affidavit?

A Yes.

Q Did you read that affidavit before you signed it?

A Yes, sir, I did.

Q You testified before the Coroner's Court on December 19th, didn't you, 1911, almost two years ago?

A Yes, sir.

Q About nine days after the shooting?

A Yes, sir.

Q Your memory was better then than it is now?

A Yes.

Q I will read some of the questions and answers you made then, and see if your testimony does not agree with what you give here. Do you remember this question: "Q How about Moore? How long had you known him? A I had never seen him; I never knew him".

A Yes, sir.

Q You said that before the Coroner's Jury?

A Yes, sir.

Q "Q This man Moore, what name did he go by? A I couldn't tell you." Do you remember that?

A Yes, sir.

Q "Q You knew him, didn't you? A No, sir; I never knew the fellow before." You testified to that before the Coroner's, didn't you?

A Yes, sir.

Q Now, do you remember this question being put to you: "Q Tell whether this is the man", that is, Sauter was then on trial before the Coroner's Jury; you remember that?

A Yes.

Q "No, sir, not to my estimation. I will tell you one thing. I don't know these big lads, and never seen them until this thing occurred, and Walsh is the only fellow I know"

A Yes, sir.

Q "I don't know Moore, except he is a little fellow. If he was put in front of me, I think I could tell him."

A Yes.

Q That is what you said before the Coroner's Jury in 1911?

A Yes, sir.

Q Nine days after the shooting wasn't it?

A Yes, sir.

Q You were not positive then, that you could identify Moore, were you?

A Well, I may have been -- if Moore was the

fellow -- that is two years ago.

Q But you said then you were not positive whether you could identify him?

A No, I could not get a good look at Moore at that time.

Q How did you come to sign that affidavit before the District Attorney?

A They used Moore's name as the other fellow.

Q You did not tell him that you knew Moore?

A No, I said I never knew Moore, I never met him before.

Q How did you get the name of Moore?

A They said the other fellow was Henny Moore.

Q Did Larkin tell you that?

A No, Larkin didn't tell me that.

Q Eddie Larkin, I mean?

A No.

Q Didn't he use the name Moore to you?

A No, sir. I heard Moore's name mentioned in the hall, when the shooting --

Q I am asking you, did Eddie Larkin tell you this was Moore?

A No, he didn't tell me this was Moore.

Q You had never seen Moore in your life, you say?

A No.

Q And at the time of the Coroner's inquest, Moore was not in court?

A No, sir.

Q And you say now that you don't identify this man at all?

A No, sir, he don't answer the description of the fellow I seen.

Q He does not answer the description of the fellow

you had soon. Now, if you did see the fellow that was with Walsh, who did the shooting, would you know him?

A Well, I am not positive, "because I didn't get a good look at him, it happened in such a quick time, I never expected it, and the fellow stood behind Walsh, the fellow that was supposed to be Henny Moore.

Q The fellow that was with Walsh was behind Walsh?

A Behind Walsh.

Q He was not facing him?

A No, sir, he stood on the side of him and put his gun around the side.

Q Behind Walsh?

A Yes, he came up behind Walsh, up the stairs.

Q And you could not see his face?

A No.

Q And who was in the hall besides Walsh and Joe Madden?

A Cunningham.

Q The proprietor of the hall?

A Yes, sir.

Q And who else? You didn't see Larkin there, did you?

A Larkin?

Q Now, be candid?

A Well, he may have been there.

Q Did you see Eddie Larkin?

A I didn't see him.

Q I mean, the first witness on the stand?

A No, sir, I seen him previous to that. I walked away from there. Eddie was standing by the door, and I walked over to the stairs.

Q At the time of the shooting did you see Eddie Larkin in the hallway?

A No, sir.

MR. HAROWITZ: That is all.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q There are a great many gangs around that section of the city, are there not?

A Yes, sir.

Q A very tough neighborhood, isn't it?

A Yes, sir.

Q What is known as --

MR. HAROWITZ: What neighborhood do you speak of?

MR. WASSERVOGEL: This neighborhood Ninth Avenue, 36th and 37th Street.

MR. HAROWITZ: That is objected to.

THE COURT: The objection is sustained.

MATTHEW J. GILLIGAN, called as a witness in behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your name?

A Matthew J. Gilligan.

Q Officer, you are connected with the Police Force of this city, and have been for how long?

A Going on three years.

Q Did you go to premises 403 West 36th Street at any time of the night of December 10, 1911?

A Yes, sir.

Q About what time?

A At about 10:15.

Q Did you see a man who was shot?

A Yes, sir.

Q Do you know his name?

A Larkin.

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Q Joe Larkin?

A Joe Larkin, yes, sir.

Q And you know nothing about the facts of the case yourself?

A No, sir, I do not.

Q But you subsequently identified the body of this man to the Coroner's Physician, did you?

A Yes, sir.

Q And where was that?

A At Now York Hospital, auditorium.

Q And the Coroner's Physician was Doctor Schultze?

A Doctor Schultze, yes, sir.

MR. WASSERVOGEL: That is all. (No cross examination).

JAMES J. FINN, Police officer, attached to the 22nd Precinct, Detective Division, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your name?

A James J. Finn.

Q You are connected with the Police Force, are you?

A Yes, sir.

Q And have been for how long?

A For the last eight years.

Q Did you arrest this defendant, Henry Moore?

A I did.

Q When and where, and state the circumstances?

A I arrested Henry Moore in Calvary Cemetery, on July 31st, at the funeral of Edward Dempsey.

Q July of the present year?

A July of the present

year, 1913, at the funeral of Edward Dempsey. I was accompanied by Detective Dolan, of the 22nd Precinct, and we saw him enter the church, and after he got out of the church and in the carriage, Officer Dolan who knew him, went over and said, "Come out here, we want you". He took him out, put the cuffs on him, walked about 100 feet, or 50 feet, previous to that, we asked him if he had anything on him.

MR. HAROWITZ: Just a minute. I object to that.

THE COURT: It is a conversation had with the defendant.

MR. HAROWITZ: They asked him if had anything on him.

THE COURT: If he asked him it is competent to ask the question of the witness.

Objection overruled.

MR. HAROWITZ: I take an exception.

Q What did he say?

A He didn't say anything at first. He walked about five feet further, and I said, "Are you sure you got nothing on you"? (He said, "Yes, I have got a gun in my inside pocket".

MR. HAROWITZ: I object to that, and ask it be stricken out.

THE COURT: The defendant said it apparently from the testimony.

MR. HAROWITZ: Had a gun on him two years after this thing happened, the commission of another crime, foreign to

this crime. Your Honor thinks that is incompetent?

BY THE COURT:

Q What did the defendant say?

A I asked him if he had anything on him? He said, "I have got a gun in my inside pocket", and he pulled the gun out of his pocket.

MR. HAROWITZ: I ask that he stricken out.

THE COURT: No, let it stand.

MR. HAROWITZ: I take an exception.

BY MR. WASSERVOGEL:

Q Of course, you have that gun here?

A Yes, sir.

THE COURT: I would not emphasize that incident. We only received that as part of the res gestae, the conversation.

MR. HAROWITZ: I respectfully except.

Q Did you have any talk with him?

A After that we walked to the car, and he told me he didn't care to talk anything about it. He said, he was up against it; he didn't care to talk much about the matter at all. Brought him over to the station house, and after a few hours, Assistant District Attorney Skinner came there and I introduced the defendant to Assistant District Attorney Skinner, and said "This is the District Attorney, Mr. Skinner", and he went about it and he interrogated him, in the regular manner.

Q Do you remember what he said?

A I remember what was said.

THE COURT: Now, Mr. District Attorney we have received

this conversation in its entirety up to this point on the theory that declaration against interest are competent against the defendant, but what was said here, was it in the nature of a declaration against interest?

MR. WASSERVOGEL: I won't press it any further.

THE COURT: I have received it because it is my duty to receive it, assuming that the evidence is competent, that you know what you are producing, but I don't see we have any competent evidence from this witness beyond the arrest, and the fact of the arrest may be competent,

but what was said is not germane to this inquiry, is it?

MR. WASSERVOGEL: Well, it has a bearing upon the matters which we are inquiring into in this case.

THE COURT: What bearing?

MR. WASSERVOGEL: In the first place, when he was arrested, the officer asked him "Have you got anything on you?" He says, "No". Then subsequently, when further questioned and pressed on that subject --

MR. HAROWITZ: This happened two years afterwards.

MR. WASSERVOGEL: What difference does it make?

THE COURT: Considerable time after the commission of the crime the defendant is arrested, a considerable time afterwards, and he had a gun in his pocket. Now, that does not tend to show the commission of murder, and yet it may, perchance, prejudice the defendant in the minds of the Jury. I think it had better be excluded. I will strike out

that conversation, and of course, gentlemen, when it is stricken out, it is not for your consideration.

MR. HAROWITZ: I now ask, in view of the circumstances, and the District Attorney having been spoken to about this before he questioned the witness, about not asking that question, I ask for the withdrawal of a juror.

THE COURT: I have already passed on it, and told the jury not to pay any attention to it. I will deny your motion.

MR. HAROWITZ: I respectfully except.

MR. WASSERVOGEL: That is all, Officer.

MR. HAROWITZ: That is all.

THE PEOPLE REST.

MR. HAROWITZ: I ask your Honor, if your Honor pleases, to take from the consideration of this Jury, the count in the indictment charging murder in the first degree.

THE COURT: What do you want to submit, Mr. Wasservogel?

MR. WASSERVOGEL: I ask that all the counts remain in the indictment at this time.

THK COURT: I deny your motion.

MR. HAROWITZ: I take an exception. I now ask your

Honor to dismiss the indictment, on the ground that the People have failed to prove a case against the defendant, and in that connection I desire to call the attention of your Honor that the only witness who identified this defendant is a brother of the deceased, who says he saw the shooting. The next witness, who is a brother-in-law of the same witness, testifies that Moore was not there. That is all there is in this case. I respectfully submit, your Honor, the indictment is so vitally important that I think your Honor ought to consider these facts and take the case from the jury.

THE COURT: The motion is denied.

MR. HAROWITZ: On the further ground if your Honor pleases, that it does not appear from the evidence in this case that the defendant, Moore, was acting in concert with the defendant Walsh, and it does not appear that the deceased, Joe Madden, was killed from the bullet fired from the revolver of the defendant, Moore.

THE COURT: The motion is denied.

MR. HAROWITZ: Exception. I now ask your Honor to charge the jury at this time that the denial of this motion does not mean that your Honor has any opinion regarding the guilt or innocence of the defendant, that your Honor simply decide that it is a question of facts for the jury to consider.

THE COURT: Yes, I so instruct the jury.

MR. HAROWITZ: In view of the sudden close of the People's case, your Honor, I anticipated they would take much more time, I ask your Honor to take a recess now, so I may consult with my client.

THE COURT: I think, Mr. District Attorney, I am bound to grant that request.

MR. WASSERVOGEL: No objection.

THE COURT: (To the jury) Do not talk about this case, gentlemen, nor permit anyone to talk to you about it, nor form or express any opinion thereon until the case shall finally be submitted to you. What time do you want to reassemble?

MR. HAROWITZ: Two o'clock.

THE COURT: Very well. We will take a recess until two o'clock.

(The Court accordingly took a recess until 2 P. M.)

AFTER RECESS.

JAMES J. FINN, being recalled on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Officer Finn, when did you first hear of this case?

A I heard of the case in the latter part of December.

Q What year?

A 1911.

Q And did you make any efforts to arrest the defendant after that?

A Well, during that time, since that time, there was a general alarm read out for the defendant, and every police officer in the City of New York was required to look for him.

Q You did not arrest him until July of the present year?

A I did not.

Q This morning you told us a conversation which you had with the defendant. I ask you to repeat that conversation at this time.

MR. HAROWITZ: I object to the question, if your Honor pleases, on the ground it is incompetent, irrelevant and immaterial, tending to establish the commission of another crime not connected with this case.

THE COURT: Well, Mr. District Attorney, I struck that out. So far as it no appears, there is no further reason for that conversation.

MR. WASSERVOGEL: Well, since this morning, if your Honor pleases, certain information has come to

my notice, on account of which I claim that this can properly be connected with the defendant in this case.

THE COURT: Well, on your promise to connect it, I will take it, subject to a motion to strike out, unless it is connected.

MR. HAROWITZ: I respectfully submit to the ruling.

Q Go ahead, please?

A As I took more from the coach accompanied by Detective Dolan, Detective Dolan went -- thumped his body, and he asked him if he had anything on him. He said, "No, I aint got nothing on me." We had walked over across the road from the cemetery, towards the gate, and I asked him again, "Have you got anything on you?" and he says, "Yes, I have a gun in my pocket; I might as well give it to you."

Q Have you the gun with you?

A Yes sir (Witness produces revolver).

Q It is not loaded new, is it?

A No sir.

Q Have you the bullet?

A Captain Jones has the bullet, outside.

MR. WASSERVOGEL: This gun is now offered in evidence, upon the promise of the District Attorney to connect it by the testimony of the next witness.

THE COURT: I will receive it for identification. Mark it for identification.

MR. HAROWITZ: The defendant objects.

(Revolver last referred to is marked People's Ex-

hibit #4, for identification, of this date)

MR. WASSERVOGEL : That is all.

CROSS EXAMINATION BY MR. HAROWITZ:

Q Didn't the defendant tell you the reason he had this gun was because he heard Larkin was after him with a gun?

A No sir.

Q It was not?

A No sir.

Q Nothing like that?

A No sir.

Q You didn't know this defendant, did you?

A I did not.

Q Never saw him before?

A Never saw him before, until the day I placed him under arrest.

Q You don't know whether he was around the neighborhood from December 1911, until the time he was arrested?

A I couldn't say.

MR. HAROWITZ: That is all.

WILLIAM A. JONES, Police Officer, attached to Police Headquarters, Detective Bureau, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your full name?

A William A. Jones.

Q Lieutenant Jones, how long have you been connected with the police department?

A Twenty six years the 21st of last June.

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Q You are what is known as the pistol shot expert of the police department, are you not?

A Yes sir.

Q And you have had charge of the revolver practice, the pistol practice school of the police department?

A I have.

Q For a number of years?

A Yes sir.

Q How many years would you say?

A It was organized in November, 1895, and I was an instructor, in charge of it, from that time until July 1911, while it was in operation.

Q Can you qualify generally, Lieutenant Jones, as an expert in your knowledge of revolvers and bullets and the effects of bullets after they are discharged? That is, the appearance of bullets after they are discharged?

A I can.

Q You have frequently seen bullets after they were discharged, haven't you?

A I have, yes.

Q I show you these two bullets, People's Exhibits 2 and 3, and ask you to examine them (Handing same to witness). Those are the same bullets that were shown to you at recess?

A Yes sir. They are 38 calibre.

Q Are they both of the same make?

A No sir, one is a foreign make; it was made in Germany; and this one was made by an American cartridge Company.

Q Just show the jury which is foreign make, and which is the American make?

A The one with the hollow base is the foreign make. The American make is not hollow as much as the foreign make. This was made in Neuremberg, Germany. They weigh practically the same.

Q They are both 88 calibre, you say?

A Yes sir.

BY THE SECOND JUROR:

Q Centre fire or rim fire?

A Centre fire.

BY MR. WASSERVOGEL:

Q Now, Lieutenant, is there any peculiarity about these two bullets that you noticed?

A Yes Sir?

Q What is it?

A They have been fired from a revolver that is what we call out of line. The cylinder does not revolve up in line with the barrel. The hand that revolves the revolver, when it is cocked, is a little bit short, and it does not drive the cylinder up fully in line. Both of these bullets have been shaved on one side, which can be seen very plain.

Q Show the jury?

A Both of these bullets are shaved very much on one side showing that they have been shot out of a revolver that is very much out of line.

Q Now, Lieutenant, this revolver, People's Exhibit #4 for identification was also shown you during the recess hour, wasn't it?

A It was.

Q Do you notice any peculiarity about that revolver?

A Yes sir.

Q Stand up close to the jury and explain to them what the peculiarity is, and speak loud enough for the Stenographer to hear you?

A The hand in this revolver is short, and it does not throw it in line when I cock it. It does not throw it clear in line; and, consequently, every cartridge

that is knocked out of it is shaved on the side.

Q Now, Lieutenant, did you make any experiments with this revolver during the recess hour?

A I did.

Q Tell the jury what you did with it?

A I went to Wanamaker's store, on Broadway, and bought some cotton batting and I went in company with the Detective that I followed on the

stand here, I don't know what his name is, to police headquarters, and I fired two shots into a wad of cotton here, and caught the bullets.

Q You did what?

A I fired two shots into the cotton batting, to catch the bullets. The bullets will roll themselves up in the cotton, and it does not penetrate any to speak of, and I catch them perfect, so they are perfect. Now, with this revolver, each one is pierced off the centre. That takes the shaving off from the bullet.

MR. WASSERVOGEL: These bullets are now offered in evidence, if your Honor pleases, the bullets used by the witness to make his experiments.

MR. HAROWITZ: I object to them, if your Honor pleases.

MR. WASSERVOGEL: First of all I want now to offer the gun in evidence, People's Exhibit #4 for identification.

THE COURT: What, briefly, do you claim you have proved with respect to this gun?

MR. WASSERVOGEL: We have proven, if your Honor

pleases, by this witness, that the bullets which are in evidence as having been found in the body of the deceased showed that they were fired from a revolver the barrel of which was out of allinement. We have shown by this witness that this revolver found on the person of the defendant is also -- the barrel of it is also out of allinement.

THE COURT: And the revolver you have shown was found on the person of the defendant two years after --

MR. WASSERVOGEL: About a year and a half after.

THE COURT: A year and a half after the alleged crime?

MR. WASSERVOGEL: Yes sir.

MR. HAROWITZ: Your Honor will remember that the testimony of the only witness for the People in this case was that the defendant only fired one shot.

THE COURT: The defendant fired one shot?

MR. WASSERVOGEL: There was one shot fired by the defendant which he thought did not go off, did not enter the body of the deceased.

THE COURT: How many bullets were found in the body of the deceased?

MR. WASSERVIGEL: There were two bullets found in the body.

MR. HAROWITZ: Four shots fired by the other man, one shot fired by the defendant.

THE COURT: Gentlemen you will remember the evidence, that this gun was found on the defendant a year and a half after the shooting; consider that; but I am going to receive it for what it is worth.

MR. WASSERVOGEL: Yes sir.

MR. HAROWITZ: I respectfully except.

(Revolver received in evidence and marked People's Exhibit #4 of this date)

MR. WASSERVOGEL: Now, if your Honor please this witness testified, further, that during the recess hour he made certain experiments with this gun, and he produces here two bullets which were shot from this gun, and which show the same marks as the bullets which were offered in evidence this morning. I think we have a right to offer these in evidence, and I now offer them.

MR. HAROWITZ: Objected to as not competent or material.

THE COURT: It is along the line of the same ruling Either my ruling was right, or wrong. If it was right I think we may properly receive this in evidence, upon its being proved that these bullets were discharged from this very gun today.

MR. WASSERVOGEL: That already has been shown.

THE COURT: I will receive it.

MR. HAROWITZ: I take an exception.

CROSS EXAMINATION BY MR. HAROWITZ:

Q Will you explain to me again what you mean by the peculiarity of that barrel?

A The hand -- when you cock the gun; the hand is so short it does not throw it clear in line; it leaves about three one hundredths of an inch.

Q In other words, the barrel is not steady; is that what you mean?

A No, the hand, what we call the arm, that which revolves the cylinder, is short, and, consequently, it can't throw the cylinder in line with the barrel.

Q In other words, it moves a little bit?

A Yes.

Q That is practically what you mean?

A No, it does not throw it up in line.

Q That is all it does, isn't it?

A No.

Q What kind are you talking about?

A When you cock it this way, it ought to come clear up, but it does not.

Q Clear up to where? Let the jury see what you mean?

A There is a stop that comes up here and strikes against that (Illustrating). When you cock it the hand is so short it does not bring it clear up against it.

Q What effect has that on the shot?

A It shaves the side of the bullet every time.

Q There are thousands of these pistols that do that?

A Possibly, yes sir.

Q And may be millions?

A I have seen several that have done it.

Q And you didn't see -- is this the way this pistol

is manufactured, or do you ascribe it that it is out of order?

A It is a little out of order, from use.

Q And you have seen lots of pistols that way?

A Yes sir, I have in old pistols.

Q You didn't see this pistol at the time of the arrest of the defendant?

A No sir.

Q The first time you saw it was to-day?

A The first time I know of, yes sir.

Q And you don't know the condition of it at the time he was arrested, when it was found on him?

A No sir.

Q You say these two bullets are both 38 (Referring to People's Exhibit #2 and People's Exhibit #3)?

A Yes sir.

Q The same calibre?

A Yes sir.

Q Why do you say one is foreign and the other American?

A The hollow base of this.

Q That is the only way you can distinguish it?

A Yes sir.

Q Isn't it possible the shot might have struck this a little stronger than the other?

A No sir; that won't make any difference, the explosion won't make any difference.

Q You are testifying now as an expert?

A Yes sir.

Q You want to tell this jury you can tell beyond a reasonable doubt, beyond any doubt, that these two bullets were not the same, the same make?

A Yes, they are not the same make.

Q Is that your opinion, or do you state under oath, beyond any doubt?

A I am positive of that.

Q But they could be shot by the same gun?

A Yes sir, a 38 calibre.

Q Where are they shaved?

A Do you notice is drawn on this side?

Q Where?

A Right there (Indicating).

Q That is the mark on this side?

A Yes sir.

Q And you ascribe that to the fact that, as you said, the barrel was not steady?

A The cylinder is not in line with the barrel.

Q And, therefore, you are of the opinion these two were shot by the same gun?

A They appear to have been shot by the same gun to me. The marking is exactly the same.

Q Of course, Lieutenant, you don't intend to convey to this jury, or to swear under oath here, that these two bullets I have shown you, People's Exhibits 2 and 3, which were found in the body of the deceased, were fired by this gun?

A No sir. They are similar, though.

Q But not by this gun?

A I couldn't say they were fired by that gun, positively.

MR. HAROWITZ: That is all.

JOSEPH O. SKINNER, Deputy Assistant District Attorney, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your name?

A Joseph O. Skinner.

Q Mr. Skinner, you are an Assistant District Attorney, connected with the Homicide Bureau of the District Attorney's office?

A I am.

Q And you were an assistant District Attorney in the month of July of the present year, were you not?

A I was.

Q Did you, on the 31st of July, this year, see the defendant, Henry Moore?

A I did.

Q And where did you see him?

A At the -- I don't know that I can recall the Precinct at the present moment.

Q One of the police station houses?

A One of the police station houses.

Q And you spoke to him, and he spoke to you?

A Yes sir.

Q Do you happen to recall what conversation you had with him?

A I remember that I gave the usual warning.

Q What was it?

A That I am an assistant District Attorney; that I wanted to ask him some questions about his connection in regard to the case of the death of Larkin, who had been killed, as I recalled it, I can't remember the exact but sometime between a year and two years, as I recall it, and that the deceased was killed in Cunningham's Hall, and I told him I wanted to ask him some questions, that he need not answer the questions if he did not wish to; and then asked him whether he was there, and he said he was.

Q Did you say to him that anything he might say would

be used against him?

A I told him that anything he might say might be used against him.

Q There was a stenographer present, who took down what you said?

A Yes sir.

Q Now, what was the conversation you had with him.

MR. HAROWITZ: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Answer.

MR. HAROWITZ: A conversation by an Assistant District Attorney, with the defendant not represented by counsel, after his arrest?

THE COURT: Yes, whatever the defendant said to the Assistant District Attorney, I take it, is competent against the defendant.

MR. HAROWITZ: I take an exception.

A I asked him if he was at the hall, and he said --

Q You asked him whether he was at what hall?

A At Cunningham's Hall on the night said Larkin was shot? He said he was. I then - - I don't remember what my next question was, but I remember that he said, "I don't wish to answer any more questions", or words to that effect. I can't remember the exact words he used.

Q And the only question he actually answered was the first question, as to whether he was in the hall that night?

A That is my recollection, that he was there, and did not wish to answer any more questions.

MR. WASSERVOGEL: Cross examine.

MR. HAROWITZ: No questions.

MR. WASSERVOGEL: The People rest.

MR. HAROWITZ: I move to strike from the record the testimony of officer Finn and Lieutenant Jones, on the ground that that testimony has not been connected. On cross examination I asked Detective Jones if he could swear that the two bullets found in the body of the deceased came from this gun found upon the defendant, and he said "No, a similar gun".

THE COURT: Of course, that is a question for the jury to pass upon, from the evidence in the case. No one could possibly say that they came from any particular pistol, but the District Attorney claims to have shown a peculiarity of this pistol which gave a peculiar marking or form to the bullet and he claims that that establishes the fact that it was the bullet from the defendant's pistol which entered the body of the deceased. Whether it was or not is a question of fact which the jury must determine from the evidence submitted.

MR. HAROWITZ: The defendant respectfully excepts. I renew the motions made previously in this case.

THE COURT: What motions?

MR. HAROWITZ: The motions to dismiss.

THE COURT: Yes.

MR. HAROWITZ: Your Honor denies them and I take, an exception.

THE COURT: Yes.

THE DEPENDANT'S CASE

Mr. Harowitz then opened the case to the jury on behalf of the defendant, as follows:

May it please the Court, Mr. Foreman, and Gentlemen of the jury:

In view of the fact that this is such an important case as it is, that this defendant sits here indicted for a serious crime, I don't think, as the case now stands for the prosecution, that I would be justified in offering any evidence at all.

However, there are only two things in connection with this case that I think ought to be cleared up, and I think you gentlemen are entitled to know.

In the first place, I shall produce a witness here who has been subpoenaed by the District Attorney who was before the Coroner, and who testified before the Coroner in 1911, who was subsequently subpoenaed by the District Attorney, and who testified before the Grand jury, subpoenaed to-day by the District Attorney, but the District Attorney did not place him upon the stand, whom I will place upon the stand, gentlemen,

Cunningham, the owner of the Hall, Patrick J. Cunningham, the owner of the Hall where this thing occurred, a man who has no earthly interest to come here and falsify either for the defendant or for the People, a man who does not know the defendant, and never saw him in his life, who, in December, 1911, nine days after this shooting occurred, was a witness before the Coroner's jury, under oath, subpoenaed by the prosecution, and who gave his version of the shooting, and he will tell you, gentlemen, as he told at that time, that the only two that were engaged in this affair on December 10th, 1911 was this man, Rocky Walsh, and the man that was killed.

He will tell you, gentlemen of the jury, as he has told the other jury that he was there in that hall with Shore, the brother in law of the first witness, Larkin, who was on the stand here, was there, and that this man, Rocky Walsh, who has not been called, that he was there, and that Larkin, the first witness upon the stand here, was not there at that time. He did not see him.

He was there from the moment Walsh pulled the gun until the last shot was fired. He was closer than any living human being. As a matter of fact, gentlemen, he tried to separate the two men at that time, when they were in mortal combat. He did not know that

Walsh had a gun in his hand until he heard a shot. He thought it was a fist fight. He will tell you there was not another soul there with a gun in his hand; that there was not another man there who fired a shot.

The only shots that were fired were fired at the time Walsh was in this scuffle with the deceased.

This man has no interest to come here and testify any other way hut the truth.

I shall place upon the stand here these two men that you saw in court this morning, Corrigan and this man Sonner.

Corrigan will tell you that at the time of the shooting they were all in the dance hall. You see, this shooting happened immediately as you come up the second flight of stairs. As you come up the second flight of stairs, there is a sort of little room there, and from there you enter the dance hall.

This shooting happened outside of the dance hall. The People who were engaged in dancing did not see it.

This man Corrigan was nearest to the door which opened into the vestibule, where the shooting happened, and as he heard the shots the door slammed on him, and as the shooting was going on he was there at the door, and at that very moment Larkin came running up, Eddie Larkin, the first witness for the prosecution, who was in the dance hall, and could not have seen the shoot-

ing, came running up, passed this man Corrigan, and ran out into the hall, after those who were engaged in the shooting had already gone, and he pulled a revolver from his pocket and leaned over the stairs, as the people were running, and was about to shoot, and Corrigan grabbed him by the hand and said "For God's sake, don't; you may hit some innocent passer by."

This young man will tell you that story, gentlemen, and if his story is true, Eddie Larkin did not see the shooting, could not have seen it.

We will also put upon the stand this man Sonner, who was just about that time, about a second or two before this happened, seated with Larkin in the back of the hall, before Larkin ran and reached this man Corrigan, with the foot of a piano stool in his hand, and he sat there talking, and he heard the shots.

Then he says he saw Larkin run, that Larkin did not start to run -- he was away in the back of the hall -- until long after the shots were fired. He will corroborate this man Cunningham.

Now, I shall place upon the stand, gentlemen, the defendant's employers, people from the neighborhood, who will testify to the fact that they have seen this defendant in the neighborhood immediately after the shooting and long after the shooting around there, that he never did sly from this charge. That is inti-

mated by the officer who said a general alarm was sent out.

Now, gentlemen, with all these facts, taking into consideration the weakness of the prosecution's case, as you all know, the only witness who swears to anything this defendant did was Eddie Larkin, from all the circumstances in the case I shall ask you for a verdict of not guilty.

PATRICK J. CUNNINGHAM, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your full name?

A Patrick J. Cunningham.

Q Where do you live?

A 402 West 35th street.

Q Mr. Cunningham, speak up so this last gentleman can hear you. What is your business?

A Liquor dealer.

Q And where is your place of business?

A 447 9th Avenue.

Q How long have you been in that business?

A Pretty near six years .

Q Were you the owner of the hall at 415 West 36th Street?

A What number, sir?

Q 403 west 36th Street, where this shooting happened?

A Yes sir.

Q What number is that?

A 403 West 36th Street.

Q You have been the owner of that hall?

A Yes sir,

lessee.

Q Do you remember the night Larkin had his affair there?

A Yes sir.

Q And did you see the shooting?

A Yes sir.

Q What time did it happen?

A About 10:15, between 10 and half past ten.

Q Now, tell the jury in your own way, Mr. Cunningham, just what you saw, and how it happened?

A Well, I was standing outside the hall, on the stair case landing, at the head of the staircase landing, and I seen a young fellow coming up stairs, and as he come up to the head of the stair case which would lead to the dance hall, another young fellow stepped out, to try to prevent him from going into the hall, and it seems as though he grappled him by the throat, and he was on the landing at the head of the stair case, and I caught hold of both of them. They wrestled for a while, and the first thing I knew I heard a shot go off, and a couple of shots right after it went off. Then the door was swung open, which led into the hall, and a crowd came out, and I ran down stairs and got a policeman, and he sent for the ambulance.

Q Who were the two men that you saw fighting?

A I don't know who they were.

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Q And did you know the fellow they call Walsh, Rocky Walsh?

A That is the man that was fighting with the man who was killed.

Q Those are the two men?

A Yes sir.

Q Did you see who had the revolver?

A No sir, I did not.

Q Did you see it in Moore's hand at any time?

A No sir.

Q Did you see -- Was there anybody else there outside of these two men with revolvers?

A Those were the only two men I saw.

Q Those are the only two men you saw shooting?

A Yes sir.

Q Did you see Shore there, the witness who was here his morning, the second witness?

A At the shooting?

Q Yes?

A He might have been on the landing, but I didn't pay any attention to him.

Q Do you know Eddie Larkin?

A Sir.

Q Eddie Larkin?

A I met him at the Coroner's jury; that is the first time I knew him.

Q Did you see him in the hall way when the shooting was going on?

A No sir, I did not.

Q Do you know Henry Moore?

A No sir, I do not.

Q Did you see him there that night?

A No sir, I don't remember.

Q Did you see him there when the shooting was going on?

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A No sir, I did not.

Q You so testified before the coroner's Jury?

A Yes.

Q You were subpoenaed there by the District Attorney?

A Yes sir .

Q And you were afterwards subpoenaed by the District Attorney to appear before the Grand Jury?

A Yes sir.

Q And you gave the same testimony there?

A Yes sir.

Q You were subpoenaed this morning by the District Attorney?

A Yes sir.

Q You were not called by the District Attorney?

A No sir.

Q Did you see this man Shore there?

A Yes sir.

Q He was there when the shooting happened?

A I couldn't tell you if he was there when the shooting happened, but I know he was in the hall at the time.

Q But Larkin you did not see at all?

A No sir.

Q How close were you to the two men when the shooting happened?

A Three of us was right close together.

Q The three of you?

A Yes sir.

Q And if there was anybody else there who fired a shot, outside of those two men, you would have seen it, wouldn't you?

A Yes sir, I believe I would.

Q You did not see anybody else there with a gun, did you?

A No sir, I did not.

MR. HAROWITZ: That is all.

CROSS EXAMINATION BY MR. WASSERVOGEL:

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Q You didn't see any gun, did you?

A Sir?

Q You didn't see any gun at all, did you?

A After they had separated, yes sir.

Q But not while the shooting was going on, you saw no gun at all?

A No sir, I did not.

Q You are a saloon-keeper?

A Yes sir.

Q You knew this man Walsh very well?

A No sir, I do not.

Q What?

A No sir.

Q At this time, in December, 1911, you had this dance hall at #403 West 36th Street, didn't you,?

A Yes sir.

Q And you had a dance hall there for how long?

A Previous to that?

Q Yes, all told?

A Oh, about a year, I guess.

Q How long have you been living in that neighborhood?

A How long? About eight years.

Q How long have you had a saloon?

A Six years next July.

Q And a great many of these social clubs hold their dances in your dance hall?

A Yes sir.

Q How many, would you say?

A Well, you mean monthly?

Q Yes?

A Maybe three or four a month, Saturday nights.

Q And, naturally you want to keep on good terms with all the officers of these associations?

A No sir, I do not.

Q You don't want to be on good terms with them?

A No sir.

Q Nor to be on bad terms with them, I suppose?

A Well it is immaterial to me.

Q What?

A It is immaterial to me.

Q Some of the club members of these clubs patronize your saloon now, don't they?

A Yes sir, occasionally.

Q Quite a number of them congregate in your saloon evenings?

A No sir, they do not.

Q Never?

A No sir.

Q But you see them very frequently, don't you?

A Yes sir, see them on the Avenue.

Q How long have you known Moore?

A Who?

Q Moore, the defendant?

A I don't know the man at all, sir.

Q Never saw him in your life?

A I don't remember seeing him, sir, no.

Q You won't say that he was not in the dance hall that night?

A No sir, I will not.

Q You would not say that?

A No.

Q You knew that Larkin was there, the man that was shot?

A Yes sir.

Q You saw him earlier in the evening, did you?

A Yes sir, taking tickets.

Q And you saw this man Walsh, too, you remember him?

A I don't know, sir.

What?

A I don't know him.

Q You knew Walsh, though?

A No sir, I do not.

Q Oh, you didn't know him either?

A No sir.

Q Well, you said in the Coroner's Court, I believe, that you did see Walsh in your dance hall that night?

A Yes sir.

Q Of course, you knew at that time that Walsh had not been arrested, and that it was safe to testify against him, didn't you?

A That what?

Q That Walsh had not been arrested at that time?

A No sir, I didn't know anything about it.

Q Didn't you know the only man under arrest was the man Sonner, who was charged with having cut the deceased?

A Yes sir.

Q You knew that Walsh was not under arrest?

A Yes sir.

Q And you say that the deceased was standing at the head of the stairs, taking tickets, when you saw Walsh coming up the stairway?

A Yes sir.

Q Walsh had been ordered out of the hall earlier in the evening, had he not, for raising a disturbance?

A Yes sir.

Q You know that?

A Yes sir.

Q And then the deceased told Walsh, "Now, you can't come in here", or words to that effect?

A Something to that effect, yes sir.

Q But Walsh persisted; he wanted to get in?

A Yes sir.

Q That is right, too, isn't it?

A Yes sir.

Q And the next thing you know you heard a pistol shot?

A After they had grappled with each other.

Q That is the next thing, you know?

A Yes sir.

Q As the deceased was pushing this man down and saying "You can't come in here", the next thing you heard was a pistol shot?

A No sir.

Q What then?

A After he tried to prevent him from coming in, he got on top of the staircase, and it looked like a fist fight; both men grappled with each other; and I grappled with them.

Q And then you heard a pistol shot?

A Yes sir.

Q Now, there were other men standing around there, were there not, right near you?

A Yes sir, the man taking the tickets.

Q Outside of that, right near where this disturbance was taking place?

A Yes sir.

Q And you were standing within two or three feet of the two men that you say were fighting?

A Yes sir.

Q And there were six or seven or eight men standing right near you?

A Yes sir.

Q What?

A Yes sir.

Q You don't know whether they took part in this general fight, or not, do you?

A No sir, I do not.

Q You paid no attention to that at all?

A There was only the three of us.

Q You don't know what part they took in this affair?

A They did not take any part in the fight.

Q They were simply standing by and looking on?

A Yes, sir.

Q You don't know the names of any of these, do you?

A No sir.

Q You didn't see where the shots came from, either, did you?

A No sir.

Q All you know is you heard a pistol shot?

A Yes sir.

Q And after you heard the first shot I believe you saw a revolver in Walsh's hand?

A That is the man, yes sir.

Q In Walsh's Hand?

A Yes sir.

Q And you saw no revolver in the hand of the deceased? That is what you said before the Coroner?

A Yes sir.

Q Now, you said also in the Coroner's Court, in answer to this question: "Q Where did the smoke come from?" and your answer was "Up between the three men." Do you remember saying that?

A Yes sir.

MR.HAROWITZ: What page is that Mr. Wasservogel?

MR. WASSERVOGEL: I think it is page 30.

Q You were also asked before the Coroner, "Q You don't know who fired the third shot, do you? A No." Do you remember that?

A Yes sir.

Q Then, you didn't know that. And you were also ask-

ed whether you knew who was around you at the time, and you said, "I don't, know who was around me." Do you remember that?

A Yes sir.

Q Have you ever seen Moore in that neighborhood before -- had you?

A No sir, I don't remember ever seeing him.

Q What?

A I don't remember ever seeing the man before.

Q Had you ever seen Walsh in the neighborhood before?

A I don't know unless I see him. I may know him if I see him.

Q Have you talked with anybody about this case in the last three or four days?

A No sir.

Q Have you talked with counsel for the defense in the last three or four days?

A This afternoon, outside.

Q Was that the first time?

A This is the first time I ever saw the gentleman.

Q Did you talk with anybody representing the counsel?

A No sir.

Q Prior to your coming to this court room?

A No sir, never discussed the case with anybody.

Q Did you go to him and talk to him, or did he talk to you?

A No sir, he came out in the hall and hollered "Cunningham"; asked me if I was Cunningham, and I said "Yes".

Q Of course, you don't know how he got your name?

A No sir.

Q It was a complete surprise to you that he should come out in the hall and say "Cunningham, Cunningham"?

A Yes sir; I don't know the man at all.

Q You did not give your name to anybody else, did you?

A No sir.

Q You did not go down to the lawyer's office to talk about this case?

A No sir, I did not; I don't know who he is.

Q Or any representative of his?

A No sir.

Q Or any friend of the defendant's?

A No sir.

Q Of course, you have no interest in this defendant whatsoever?

A Not at all, sir, no.

MR. WASSERVOGEL: I think that is all.

RE-DIRECT EXAMINATION BY MR. HAROWITZ:

Q You testified before the Coroner didn't you?

A Sir.

Q You testified before the Coroner?

A Yes.

Q And I have, showed you your name here in the minutes?

A Yes sir.

Q You were not surprised how I knew your name?

A That was this afternoon.

Q The first time you saw me in your life was this afternoon?

A Yes sir.

Q I asked you who was Cunningham?

A Yes sir.

Q And I handed you a subpoena?

A Yes sir.

Q And I asked you if you testified before the Coroner?

A Yes sir.

And showed you your name here?

A Yes sir.

Q Now, Mr. Wasservogel has asked you certain questions which were put to you before the Coroner. Let me ask you some others. Do you remember this, "Standing almost within three feet of where the thing occurred -- "The question was, "When the shot occurred, where were you? A Standing almost within three feet of where the thing occurred"

A Yes, that is true.

Q "Q Did you see a revolver in any one's hands? A I saw the revolver."

A That was a man they called Walsh.

Q "Q Did you see a revolver in any one else's hands? A No sir, only one." Do you remember that?

A Yes sir.

Q Do you remember this question: "Q Did you see Edward Larkin? A I don't remember seeing him during the shooting".

A Yes sir.

Q That was nine days after the shooting you testified before the Coroner?

A Yes sir.

Q "Q Did you see Shore there? A I think he was there." Do you remember that?

A Yes, he was taking the tickets.

Q "Q Did you see a man there called Moore? A I don't know him." Do you remember that?

A Yes sir.

Q "Q Did you see any one else with a revolver? A No." Do you remember that?

A Yes sir.

Q "Q Did you see any one else engaged in this fight except these two men? A No sir." Do you remember that?

A No sir, that is right.

Q Now, Mr. Wasservogel has asked you about the three men. Now, let me read this testimony. Do you remember this question: "Q Did you see the flash of the gun? A No sir, I did not. Q Did you see the smoke? A Yes sir. Q Where did the smoke come from? A Up between the three men. Q Yourself? A And the other two."

A yes sir.

Q That is the three men that you are referring to?

A Yes sir, that is the three men.

q "Q Yourself? A And the other two. Q Madam and Walsh ? A Yes." Is that right?

A Yes sir.

Q Do you remember this question page 30: "Q Did you see a revolver in any one else's hand when the second shot was fired? A I know here was one revolver I saw, that was in the hand of the man they called Walsh."

A Yes sir.

Q Do you remember this question, page 31, "Q You saw no other revolver? A No."

A Sir?

Q "Q You saw no other revolver? A No."

A No sir.

Q "Q And you saw no one else fire a shot? A No."

A No sir.

Q Do you remember this question "Q At the time the third shot was fired, did you see a revolver in Walsh's hand? A He had a revolver all the time." Do you remember that?

A Yes sir.

Q Page 32: "Q Did these shots come very quickly

one after another? A Yes."

A Yes sir.

Q Do you remember this question page 33: "Q What were you doing? A Wrestling with the two men. Q Which men?

A The men that was mixed up in the shooting, Madan, the man that got killed, and the man called Walsh."

A Yes sir.

Q "Q Did you see Larkin there? A Not at the time the thing happened", do you remember that?

A Yes sir.

Q "Q Where was he? A I don't know." Do you remember that?

A Yes sir.

Q Now, all these questions, Mr. Cunningham, were put to you by the Assistant District Attorney before the Coroner's Jury, weren't they?

A Yes sir.

Q And you were then his witness?

A Yes sir.

MR. HAROWITZ: That is all.

RE-CROSS EXAMINATION BY MR. WASSERVOGEL :

Q Do you know a young man named Sonner?

A Yes sir.

Q Do you know a man named Corrigan?

A No sir.

Q Did you ever see Corrigan in your life?

A I don't know. I might know him if see him.

Q Did you talk with Sonner that night?

A That night?

Q Yes?

A I don't remember.

Q You wont say that he was there, or was not there, will you?

A No sir, I will not.

Q Did you see Sonner outside to-day?

A Yes sir.

Q Did you see this young man that was with Sonner,

called Corrigan?

A I seen him with a number of young men. I don't know Corrigan.

Q Do you recognize any of the men you say you saw outside as having been in your dance hall that night?

A No sir.

Q Not a single one?

A No sir.

Q You won't say whether any of these men were right near the shooting at the time?

A No sir.

Q There were six or eight men standing right around Walsh, and you can't identify any one of them?

A What?

Q There were six or eight men you say, standing right near you at the time of this shooting, and could you identify any one of them?

A No sir.

Q You were laboring under great excitement at the time?

A Yes sir.

Q Very much excited?

A Yes sir.

BY MR. HAROWITZ:

Q There were about 500 there at the time?

A I couldn't say that.

Q There were several hundred?

A There were several hundred, yes sir.

Q And you could not tell who was there and who was not there?

A No sir, I could not.

Q Who hired the hall from you?

A I don't know; I don't remember their names.

Q Was it Larkin?

A I believe it was that little fellow I see outside; I don't know his name.

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Q Larkin?

A One of the Larkins, yes.

BY MR. WASSERVOGEL:

Q Did you meet any people down stairs after you blew a whistle for the police?

A No sir.

Q Did you talk to anybody down stairs?

A No sir.

Q And say that a man had just been shot, and that people had been using blank cartridges, or something to that effect?

A No sir.

Q You did not say that?

A No sir.

MR. WASSERVOGEL: That is all.

HUGH M. CORRIGAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A Hugh M. Corrigan.

Q Where do you live?

A 765 8th Avenue.

Q Mr. Corrigan, what is your business?

A Leather worker for Crouse & Fitzgerald.

Q How long have you been working for them?

A Seven years.

Q What did you mean by a leather worker?

A Make suit cases, valises, bags and other small articles.

Q Where is their place of business?

A 302 West 41st Street.

Q And you have been working for them for the past sev-

en years?

A Yes sir.

Q Were you present at this ball, at the time the dance was given, on December 10th, 1911?

A Yes sir.

Q Who did you buy your ticket from?

A One of the boys belonging to the Winnoa Club.

Q Do you know who he was?

A Only by sight.

Q And did you know what the affair was far?

A I believe it was a benefit to somebody that was in prison.

Q Larkin's brother?

A Yes sir.

Q Were you present at the dance?

A Yes sir.

Q Now, were you present at the time you heard of the shooting?

A I was inside of the hall at the shooting.

Q Just tell the jury in your own way what you know about the shooting and how it happened -- withdrawn. You didn't see the shooting?

A No sir.

Q Did you see Eddie Larkin there at the time of the shooting?

A Yes sir, inside the hall.

Q Tell the jury how you know he was inside the hall way at the time?

A I was inside, waiting to get a dance with the girls there, and I didn't know them crowd of girls in that place and none of them would dance with me, so the music was just about stopped, and I walked to the door, and as I get to the door, or three foot from the door the door slammed in my face, and I heard shooting out there. Then I heard three shots, first one and then two together. I stopped for a minute; I didn't know what to do, I was afraid, I

didn't know what her to run back or stand there ; so I opened the door about two inches, and I looked out and I seen nobody out there. I opened it wide and I walked out and I seen Joseph Larkin laying on a bench, and I looked at him; his face was to the wall; and I just turned and I heard somebody run behind me, and I was afraid it was somebody else coming out, and turned and seen Eddie Larkin.

Q Did you see where he came from?

A From the dance hall, about one minute behind me. There was nobody there while I was there, outside of the man that shot. I turned, and he was pulling a revolver from his pocket.

Q Is this the man you mean? (Indicating Edward Larkin, first witness)

A Yes sir, he was pulling a revolver from his pocket, and he leaned over the banister and said, "Give it to the, cock-suckers, boys, they shot Joe; give it to them." I said, "Don't do that, Eddie, you are liable to hit some girl running down stairs." He puts the revolver in his pocket, and I ran out. I was scared. I did not want to stay there. I went home.

MR. HAROWITZ: That is all.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say you work where, young man?

A Crouse & Fitzgerald.

Q Of course, you know the defendant, Henry Moore? Don't you?

A By sight

Q How long have you known him by sight?

A Well, I

know him from pausing up and down the Avenue, I should judge about two and one half years.

Q Two and one half years?

A Yes sir.

Q Not before then?

A No sir.

Q You didn't know him in 1908, did you?

A 1908, I don't think so.

Q Just refresh your recollection on that subject if you can. Did you know him then?

A No sir.

Q What?

A No sir.

Q When did you first see him around the Avenue?

A Well, I couldn't be exact on the date. I am passing up and down that Avenue right along, I might have seen him in 1900, for all I know, but I didn't know who he was at that time.

Q When did you first know who he was?

A Oh, I should judge about 1911, the early part of it.

Q How did you come to know who he was?

A Somebody pointed him out to me one night.

Q Some one pointed him out to you as he was passing by?

A Passing by.

Q Is he a prominent character in that neighborhood?

A Not that I know of.

Q Who was the person that pointed out this man, Henry Moore, to you?

A I can't just recollect who it was, sir.

Q You don't recollect that, do you?

A No sir.

Q What was the occasion of his pointing out Henry Moore to you?

A I don't know. He was walking up the Avenue

with a girl, and he said "There goes Henny". I said "Who is Henny?" He said, "That is Henny Moore". No interest to me.

Q Was that after the shooting?

A I believe it was a little before the shooting, some time before the shooting.

Q Did you ever speak to Henry Moore after the time you say he was pointed out to you?

A No sir, I might say -- about three months afterwards, I think I said "Hello" to him.

Q You said "Hello" to him, although you had never been introduced to him?

A No sir, never been introduced to him.

Q And I suppose he said, "Hello" to you?

A He answered me back.

Q He did?

A Yes sir.

Q He had never spoken to you, either?

A No sir.

Q How often did you say "Hello" to him, in this way?

A Well, if he passed alongside of me, I would say "Hello", but I wouldn't go out of my way to say hello to him.

Q When did you first hear of this case?

A Hear of what case?

Q This case against Henry Moore?

A The first I heard of it?

Q Yes?

A Shortly after he was arrested.

Q When?

A About a month or two ago, whenever he was arrested.

Q When, was it?

A I don't recollect the time he was arrested.

Q You are a clerk, employed in a prominent business house?

A No sir, I am not a clerk.

Q What are you?

A I work there as a leather worker.

Q You read the newspapers?

A That is the time I knew he was arrested.

Q And your best recollection is it was about a month ago?

A Well, a month and a half; I don't remember; I don't put much stock in that stuff.

Q After you heard of his arrest, did you discuss the case with any one?

A Yes sir, that is how I got mixed up, and I went around bragging of it.

Q You frequently brag about certain things?

A No sir; when I heard Henny Moore was locked up I said "That is funny they arrested him". I didn't know the police were looking for him.

Q You didn't know that?

A No sir, I did not.

Q When did you last see the defendant prior to his arrest?

A About a month.

Q A month before?

A About a month.

Q And when was that?

A Well, if you tell me the time he was arrested I will tell you the time I seen him.

Q These twelve gentlemen want to find out from you?

A I can't remember what time he was arrested?

A I don't put no stock in that stuff.

Q I am asking you when you saw the defendant for the last time prior to his arrest?

A About a month previous.

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Q And when was that?

A That I can't remember sir; I am sorry.

Q What?

A I can't remember that.

Q You remember everything else that happened at the time of the shooting, don't you?

A I remember it. Well, I should say I ought to. If anybody has the misfortune of being in a thing like that, they remember it.

Q And you remember when the shooting took place?

A The date?

Q Yes?

A You brought it to my recollection.

Q I did?

A Or the Attorney did.

Q Your attorney did. And when was it, did he say?

A December 10th.

Q What year?

A 1911.

Q And between December 10th 1911, and the time of the defendants arrest, you had not spoken about the case to any person at all?

A No sir.

Q You have been living in that neighborhood for some time, have you?

A About ten years.

Q You know most of the young men in the neighborhood?

A No sir, I don't come from that neighborhood. I live in 47th Street and 8th Avenue.

Q That is also on the west side?

A Yes, but that is a big difference.

Q Do you belong to the Winnoa Club?

A No sir, I do not.

Q You would not belong to that club, would you?

A I would not.

Q That is a pretty bad club, isn't that?

A From what I hear of it, yes.

Q You wouldn't belong to a club of that kind?

A I certainly would not.

Q But when you heard that one of its members had been locked up and was in the Tombs, you thought you would buy a ticket to the benefit?

A Yes, I would pay 35 cents any day in the week rather than have trouble with them. It pays me to pay 35 cents and keep away from them. If I didn't buy a ticket I would blame soon feel something for it. I would rather pay 35 cents and got to the affair and keep out of trouble. I went there. I never thought there would be anything like that, but I knew that crowd.

Q It is easy to mix with the crowd?

A Oh, no.

Q But you are always willing to help a man who is in trouble charged with crime?

A No sir, I am not.

Q Between the time of this shooting, and the time when you heard of the defendant's arrest, had you talked about the case with any one?

A No sir.

Q Not a soul?

A No sir.

Q Do you know Cunningham, the saloon keeper?

A By sight.

Q Never spoke to him about the case?

A Only said "Hello".

Q Have you spoken about the case recently with anybody?

A No sir.

Q Have you talked with this lawyer, the defendant's lawyer about the case?

A Yes, I was down in the office. One of the men outside brought me down.

Q Do you know who the man is that brought you there?

A Yes. J. Cohen.

Q Who?

A J. Cohen.

Q You say you saw the defendant about a month prior to his arrest. Was that at a funeral?

A No sir.

Q What was the occasion of your seeing him? Where was it?

A I seen him walking down Tenth Avenue, between 42nd and 43rd Streets.

Q Did you speak to him?

A No sir; he was on the other side of the street.

Q You didn't buy your ticket from him, did you?

A From who?

Q Moore?

A For what?

Q For that affair that night?

A No sir.

Q One of the boys in the neighborhood?

A One of the boys downtown.

Q One of the boys down town?

A Down town.

Q Some one that worked in the same place with you?

A No sir, none of them people worked with me.

Q What?

A No sir, they don't work with me.

Q They don't work with you?

A No sir.

Q You don't remember the person who sold you that ticket?

A I don't remember I by name, sir, but I think I would know him if I seen him.

Q Was he a stranger to you?

A I knew him from a dance held over in Murray Hill. He says "Where are you going?" I said, "I am going to a dance". He said "Here is a ticket for tonight. Come over." I said, "No, I am going to Hammerstein's". He said, "Oh, take the ticket and don't be afraid".

Q Then he was practically giving you the ticket?

A No thirty five cents". If I took the ticket I had to pay for it.

Q You were just going into another dance hall?

A No sir, I was going to Hammerstein' s, and I was in the Murray Hill Lyceum at the time they asked me to buy a ticket, which I did.

Q Had you seen this young man prior to that day?

A Who is that?

Q The young man that sold you he ticket?

A Yes, from going in dance halls.

Q You are a frequenter of these dance halls?

A No sir.

Q You say you knew him from going to dance halls?

A I go to dance halls every Sunday afternoon.

Q Then you are a frequenter of dance hall?

A I don't know if you would call that a frequenter.

Q There are fifty two Sundays in a year?

A Yes sir. And I got about twenty times.

Q Twenty out of the year?

A Yes sir.

Q And you have been going to dance halls for some years haven't you?

A Not some years.

Q You did in 1911, anyway?

A Once in a while.

Q And you still go to those dances?

A No sir, I do not.

Q Not since then?

A I have been to dances, but nothing like that, I can assure you.

Q And did you know any of the members of the Winnoa Social Club?

A Yes sir.

Q How many members did you know?

A I should judge I knew about six of them.

Q Can you mention their names?

A No, I don't think I could.

Q You say you know them?

A Yes, by sight.

Q Only by sight?

A You see, sir, if you go around --

Q Now, don't argue with me?

MR. HAROWITZ: I ask your Honor to instruct the District Attorney to treat the witness --

THE COURT: The incident is closed. Proceed with your question. Mr. Witness, answer questions, only that and nothing more.

THE WITNESS: Yes sir.

Q There were quite a number of people in that hall that

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night?

A Yes sir.

Q Do you know a man named Corrigan?

A That is my name .

Q Do you know a young man named Sonner?

A Yes sir.

Q Did you see him that night?

A I seen him, yes sir.

Q Did you go to the dance hall with him?

A No sir.

Q Did you know him before that night?

A Yes sir.

Q How long had you known him before that night?

A About a year.

Q Where does he live?

A Well, I don't know where he lives.

Q Where does he work?

A I believe he works for Burns Brothers, coal business.

Q Do you know where he works?

A Burns Brothers, I believe.

Q Did you have an appointment to meet Sonner that night?

A No sir.

Q Did you see Sonner before the shooting?

A Yes sir.

Q How long before?

A An hour.

Q An hour before the shooting you saw him?

A Yes sir.

Q Where was he then? An hour before the shooting?

A In the dance hall.

Q At the time of the shooting you did not see him?

A No sir.

Q You were under great excitement at that time, and you didn't see him?

A Not at the time of the shooting.

Q How long before the shooting did you see Edward Larkin?

A Every five or ten minutes. It is a small hall.

Q He was going in and out all the time?

A Yes sir.

Q He was standing outside, taking tickets, for a while.

A He has not taking tickets while I was there.

Q You don't know whether he was taking tickets at any time?

A No sir.

Q You wont say he was not taking tickets, during part of the night?

A No sir.

Q All you know is he was walking in and out of that hall at different times?

A Yes sir.

Q And whenever he would go into the hall, of course you would notice him?

A Yes sir.

Q Had you known him before that night?

A Yes sir.

Q Known him for some time?

A No, not for some time.

Q How long?

A About a month.

Q And where did you make his acquaintance?

A I think I met him at Murray Hill Lyceum.

Q Also at Murray Hill Lyceum?

A Yes sir.

Q Did you keep up your acquaintance with him, call on him?

A No sir .

Q Did you meet him at any time prior to this dance?

A No sir.

Q Did you know he was a brother of the person for whose benefit the dance had been given?

A No sir,

not at the time I didn't know who the benefit was for.

Q You didn't know for whom the benefit had been given on the night of the dance?

A Not until I got to the dance.

Q You had a ticket for the dance?

A Yes, but it didn't say on the ticket who the benefit was for. They just said Winnoa Club.

Q And at the time of the shooting there were a great many people in the hall, were there not?

A Yes sir.

Q You heard shooting where? Outside or inside?

A Outside. I was inside at the time.

Q Right at the top of this stairway. I show you a hat check room. Do you remember that (Indicating on diagram, People's Exhibit #1)

A Yes sir.

Q And there was a platform right next to that, do you remember that?

A Yes sir.

Q And there was a stairway going down from the second story. Do you recall that?

A Yes sir.

Q Then there was a dressing room, do you remember that?

A Yes sir.

Q Then there was a meeting room; that is the hall?

A The dance hall?

Q Yes?

A Yes sir.

Q Now, the dance hall itself was how far from the place where the tickets were being taken?

A Well, there is a vestibule there; I should judge six foot.

Q An ante room?

A Yes sir, vestibule I call it.

Q How far from the vestibule that the tickets were being taken?

A Right outside the door. That is the vestibule, and this would be the door (Indicating on diagram, People's Exhibit #1)

Q You were in this hall when you heard the shooting?

A Yes sir.

Q There were a great many people in the hall?

A Yes sir.

Q And when you heard the shooting you immediately ran out?

A No sir, I was walking out at the time; the door was shut, and I should judge I was about here, and the door was closed, and I heard the shooting, and I was afraid to go any further.

Q And as soon as you got outside of the door of the hall the doors were shut, in order to prevent the people who were still in the hall from running out and being hurt; is that it?

A I was not in the hall at the time.

Q But the object of closing these doors was to keep the people in the hall, so that they would not get into trouble?

A I don't know the object in closing the doors.

Q Did you see the person who closed the doors?

A No sir, I did not.

Q You did not see that?

A No sir.

Q You didn't see any person standing at the door keeping guard, preventing people from going from the hall into the room?

A No sir.

Q How far had you gone into the ante room towards the stairway when you first observed the man who had been shot.

A I had to pass all the way through. When the man got shot he was outside.

Q How long did it take you to pass through this ante room to the place where the man was lying?

A A couple of seconds.

Q And how long after you saw the man lying there did you see Edward Larkin?

A I should say half a minute, or a minute.

Q As long as that?

A You know in the excitement --

Q Now, just tell me how long it takes for half a minute to go by, commencing from this point?

A Right now.

Q Well, that is about two seconds, or three seconds. So that about two or three seconds after you saw this man lying there, you noticed Edward Larkin?

A Yes sir.

Q Now, where was Edward Larkin when you first saw his face?

A The first time I ever seen him?

Q No, that night, after you saw the man lying there, the man who had been shot?

A He was coming out the door.

Q What door?

A The door leading from the vestibule into the hallway.

Q The door leading from the vestibule into the door way?

A Into the hallway.

Q Into the hall?

A Hallway, not the dance hall.

Q No, the dance hall was some distance away, wasn't it

A Well, a little distance.

Q How far would you say that dance hall was from the hallway where you were standing and the body of the man was lying? Just give us approximately the distance?

A From where you are now, a little past that first railing.

Q This railing?

A Yes sir.

MR. WASSERVOGEL: What would you say this is, Mr. Harowitz?

MR. HAROWITZ: What do you say it is?

MR. WASSERVOGEL: Will you give us your judgment, Mr. Foreman?

THE SECOND JUROR: 18 feet.

THE FOREMAN OF THE JURY: About twenty feet.

Q And was the hall itself as large as the rest of this room is from the railing to the wall?

A Yes, I think it is a little larger.

Q A Little longer than that?

A A Little longer.

Q Can you say that when you were standing near the body you saw Larkin coming from where?

A I was standing, going out. I was not near the body; I was just going past the door to the banisters, and I turned and seem Mr. Larkin coming out.

Q From where?

A From the dance hall.

Q From the dance hall?

A Yes sir.

Q The dance hall was some distance away, wasn't it? Didn't you say a few minutes ago that it was from the ante

room by the vestibule?

A We have to pass through the vestibule to get into the hall.

Q I am asking you where he was with respect to yourself at the time when you first laid your eyes on him. It was not in the vestibule?

A In the vestibule of the dance hall.

Q In the vestibule of the dance hall?

A Yes sir.

Q And at that time seeing a man lying there, did you know he had been shot?

A I didn't know he had been shot, but I heard the shots fired; I didn't know whether he was injured or not.

Q Did you see the blood?

A No sir, I did not.

Q He was not bleeding at the time?

A I didn't notice it.

Q Too excited to notice that?

A Yes sir, I sure was.

Q Did you see other people around?

A I did when I turned.

Q Quite a number of people around?

A Coming out of the hall, yes sir.

Q Quite a number of people?

A Yes sir.

Q Did you speak to young Larkin?

A At the time?

Q Yes?

A Only when I grabbed his hand, when he leaned over the bannister.

Q Did you know his first name?

A Eddie, yes sir.

Q You always called him Eddie?

A No, I didn't always

call him Eddie, but I knew who he was that night.

Q You knew him well enough to call him Eddie and not Larkin?

A I would call anybody by their first name instead of their last name.

Q And did you see the proprietor of the hall, Mr. Cunningham?

A No sir, I don't think I did.

Q Didn't see him either, did you?

A No sir.

Q At the time of the shooting?

A No sir.

Q You don't know where Mr. Cunningham was?

A No sir, I do not .

Q Did you talk with Mr. Cunningham about the case subsequently?

A No sir.

Q At any time?

A No sir.

Q Did you see the police come and take the man who had been shot away in an ambulance?

A No sir, I was out of the hall then.

Q You went right home?

A I went right home.

MR. WASSERVOGEL: That is all.

RE-DIRECT EXAMINATION BY MR. HAR OWITZ:

Q The District Attorney asked you if you saw Cunningham there. You didn't see anybody there after the shooting?

A No sir.

Q They had all run out?

A Yes sir.

Q Cunningham at that time was on the sidewalk, blowing his whistle?

A I heard he was on the sidewalk blowing his whistle, but I didn't see him

Q At the time of the shooting, you were still in the dance hall?

A Yes sir.

Q At the time you saw Eddie Larkin coming into the vestibule, where did he come from?

A from the dance hall.

MR. HAROWITZ: That is all.

RE-CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Now, you say that young Larkin came running out of this vestibule, running over to the bannister, didn't he?

A Yes sir.

Q And said, "Get the something or other, they shot Joe?"

A I heard him say that?

Q You heard him say "They shot Joe"?

A Yes sir.

Q So that you received the impression from his remarks then made that he already knew that his brother Joe had been shot by some people who had run down stairs?

A From his words, yes sir.

BY MR. HAROWITZ:

Q His brother was lying there in front of you?

A His brother was lying there in front of me.

Q And you heard these shots?

A But I didn't know he was injured; I didn't look twice at him.

Q But you are positive at the time the shots were fired Eddie Larkin was in the dance hall, and not in the vestibule?

A Yes sir, he come running out after I did.

Q And you got out first?

A Yes sir.

Q And you didn't see anything of the shooting?

A I

didn't see nothing of the shooting. I don't know nothing about it.

BY MR. WASSERVOGEL:

Q Didn't you hear Larkin say that he had been back in the dance hall after the shooting and had come out again?

A No sir.

Q Didn't you hear Larkin say that he had gone into the dance hall to get assistance, and that he was running after the people who had, shot his brother?

A No sir, he did not.

BY MR. HAROWITZ:

Q After the shooting, had you seen Moore around the neighborhood?

A On and off, yes sir.

Q How often?

A I have seen him a dozen or two dozen times.

BY MR. WASSERVOGEL:

Q Where was he living then?

A I don't know, sir.

Q What?

A I don't know.

Q Where were you living?

A 765 8th Avenue, been living there for nine.

Q And you only would see him pass by?

A Yes.

Q Did you ever talk to him about this shooting?

A Never knew he was wanted for any trouble, sir.

Q Did you see Moore that night?

A I don't think I did.

Q What?

A I don't think so.

Q But you wont swear he was not there?

A I wont swear, but I didn't see him.

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Q Didn't you know that a warrant had been issued for his arrest? After the Coroner's inquest?

A No sir, I did not.

MR. WASSERVOGEL: That is all.

JOSEPH J. SONNER, called as a witness on behalf of the defendant, being first duly sworn testified as follows:-

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A Joseph J. Sonner.

Q Where do you live?

A 456 West Thirty-eighth Street.

Q How old are you?

A Twenty-six.

Q Where do you live?

A 456 Thirty-eighth Street.

Q West Thirty-eighth Street?

A Yes, sir.

Q What is your business?

A Truck driver.

Q For whom?

A Burns Brothers.

Q Is that the coal people?

A Yes, sir.

Q How long have you been working for Burns Brothers?

A Well, about three years and a half.

Q Are you working there now?

A Yes, sir.

Q Were you at this dance given by the Winnoa Club for the benefit of Larkin's brother?

A Yes, sir.

Q And what time did you get there?

A Well, about half past eight.

Q Who did you buy your ticket from?

A I paid going into the door.

Q You bought and paid for our ticket?

A Yes sir.

Q Do you remember the time of the shooting?

A Well, I was sitting down at the front end of the building when the shooting was going on.

Q Who did you your admission to?

A Shore.

Q Where was Eddie Larkin?

A Eddie Larkin was down at the foot of the hall, talking to me.

Q I mean, at the time you came in?

A I didn't see him around there.

Q You didn't see him? You saw Shore?

A Yes, sir.

Q At the time of the shooting, where were you?

A I was sitting down at the end of the hall.

Q The dance hall?

A Yes, sir.

Q You mean the end furthest from the front?

A Yes.

Q Did you see Eddie Larkin there?

A Yes, I seen Eddie Larkin sitting down with me.

Q Did you talk with him immediately before the shooting?

A No, I said to him -- he had the leg of the piano stool in his hand, and I said, "why don't you take that out of your hand? You might raise trouble with that".

A With that, the shots were fired, and I put my over coat on my arm and put my hat on and ran out, and the door was just opened as I got there.

Q And you all ran out?

A We all ran out.

Q And you are sure at the time you heard the shots you were sitting there, talking to Eddie Larkin?

A Yes, sir.

Q And did you start going out before Larkin, or did he run out before you?

A I ran out before Larkin.

MR. HAROWITZ: That is all.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Do you know Henry Moore?

A No, sir, I do not.

Q What?

A I do not know him to speak to, only to see him passing up and down.

Q You also see him passing up and down Ninth Avenue; is that right?

A Yes, sir.

Q When for the first time did you see Henry Moore passing up and down Ninth Avenue?

A Oh, I see him regularly.

Q Did you see him in 1908?

A I seen him regularly.

Q Give me the months of 1908 that you saw him walking up and down Ninth Avenue? What months in 1908 will you say he was walking up and down Ninth Avenue?

A Well, I can't just tell you the months.

Q Give me any particular month, or any particular day? Look at me now.

MR. HAROWITZ: I object to that. How can he remember 1908.

MR. WASSERVOGEL: I have my reason for asking such questions.

THE COURT: Please cross examine without comment, Mr. District Attorney. Mr. Harowitz, resume your seat, and let the examination proceed.

MR. HAROWITZ: I object to the question.

THE COURT: The objection is overruled. Be seated, please.

MR. HAROWITZ: I take an exception.

THE COURT: Proceed.

Q Will you mention any particular month?

A Well, I can't --

Q That you saw him in the year 1908 passing up and down Ninth Avenue?

A Well, I seen him here last Christmas Eve passing up and down the Avenue -- New Year's Eve.

Q That was not 1908, was it? You know what year you are talking about now?

A 1912.

Q Not 1908. Did you know him prior to 1908, just by seeing him around?

A No, just saw him walk through the street.

Q Did you know him by name?

A No, sir.

Q When did you first find out this name?

A Well, I only found out his name by people talking about him.

Q And when for the first time did you hear people talking about him? What was the occasion?

A Well, I heard something about three or four years ago, that it was Moore, and I never spoke to the fellow. I always seen him walking.

Q He was quite a prominent character in that neighborhood?

A No, sir, I don't know anything about the fellow.

Q People would talk about him as he passed by?

A They only said, "that is Henny Moore".

Q Can you give me the name of any person that told you "That is Henny Moore"?

A No, only I was passing

through the street myself. They said, "That is Moore".

Q But can't you give me -- these twelve gentleman want to know the name of the person that told you "There goes Henry Moore".

A I couldn't tell you that; I didn't know the people that was standing on the Avenue.

Q Well, you have seen him this way on the Avenue for some time?

A Yes, sir.

Q Had you ever spoken to him?

A No, sir.

Q Did you ever did him the time of day?

A No, sir.

Q Did you see him on the night of the shooting?

A I didn't see him the night of the shooting, no, sir.

Q How long were you in the hall?

A About an hour.

Q You won't swear that he was not there, will you?

A I didn't see him there; I can't swear when I didn't see him there.

Q And you arrive at about what time?

A About half past eight.

Q And you remained until when?

A Until the shooting started?

Q When was that?

A I guess that started about half past nine, or so, or ten o'clock.

Q And you were at that time where, which part of the premises?

A Down in the front end of the building, front end of the dance hall.

Q You mean, in the main hall?

A In the dance hall.

Q In the dance hall itself?

A Yes, sir.

Q Now, young Larkin was standing part of the evening at the head of the stairs, taking tickets, was he not?

A I didn't see Eddie Larkin taking tickets.

Q What?

A I didn't see Eddie Larkin taking tickets there.

Q At any time that night?

A I see him when I was in the hall, about half an hour, I see him out there, and he was going in and out the hall, and he sat down in back and was talking.

Q Could you see from the entrance of the hall itself out into the lobby, where the stairway was?

A No, sir, it was too long.

Q What is that?

A It was too long; you couldn't see out.

Q But you say you saw him, from where you were standing in the body of the hall, you could see him taking tickets?

A He was taking tickets when I came in; that was the only time I seen him, until he come in the hall. Then he sat down in the back, talking, and he had this piano stool.

Q You told us that before?

A That is all I know about it.

Q How long was he in the hall with you all told? Do you remember that?

A He was going in and out, and then he sat down for a while.

Q You don't know, of course, what he was doing on the outside?

A No, sir, I do not.

Q You don't know what persons he spoke to, or who he saw, or anything about it?

A No.

Q At any rate, there was a time while you were in the dance hall that you heard a shot; isn't that so?

A I heard a shot.

Q You heard more than one shot?

A A couple of shots.

Q How many shots?

A I didn't count them. I was too nervous; I wanted to get out of the place.

Q You were very much excited?

A Yes, sir, I was glad to get out.

Q Quite a number of people in the hall?

A Yes, sir.

Q Many of them ran out?

A Oh, there was a lot ran out. I guess they was all glad to get out.

Q Did you see the door leading into the hall closed by some one, to keep the crowd back?

A Yes, the door was closed, and as I got to the door this Mr. Corrigan, I see him open the door to go out, and I went right down stairs.

Q You passed out with Corrigan?

A No, Corrigan was about ten feet ahead of me.

Q Corrigan was about ten feet ahead of you?

A Yes sir.

Q How far was Larkin from you at the time Corrigan was ten feet from you?

A I couldn't tell you. Larkin was in back.

Q How far in back?

A I couldn't say. I didn't look around to see.

Q You don't know how long before you went out of the hall that Larkin was outside?

A No, sir.

Q You don't know whether it was two minutes, or one minute of how long it was, do you?

A No, sir.

Q And you immediately ran out?

A Yes, sir.

Q Did you see a man lying down on the ground, or on a settee?

A There was a man laying on the floor.

Q Did you see whether he was bleeding?

A I didn't take notice of that.

Q You ran right out?

A I ran right out.

Q Did you give your name to the police at that time?

A No, sir.

Q You were not a witness before the coroner's court?

A No, sir.

Q Neither was Sonner?

A (No answer)

Q You gave your name to no one at all?

A No, sir.

Q When for the first time did you see the defendant, Moore, after the shooting?

A After the shooting?

Q Yes.

A Oh, I seen him a couple of nights after that.

Q Where did you see him?

A I seen him on Eighth Avenue.

Q Did you talk to him about the shooting?

A No, sir, I didn't never talk to him at all.

Q You had heard after the shooting the names of the persons who were charged with the shooting, had you not?

A Yes, sir.

Q You did, isn't that right?

A Was charged with the shooting?

Q Yes.

A No, I didn't hear that.

Q Did you hear the name of Walsh?

A No, sir.

Q Didn't you hear a man named Walsh and a man named Moore had been charged with the shooting?

A No, sir.

Q Did you inquire after you ran out of this hall?

A No, sir.

Q Did you at any time after you ran out, the next day, the next week, read about the case?

A No, sir.

Q You were not interested in that?

A No, sir, I was not interested in that case.

Q Did you know the name of the man who had been shot?

A Only they say it was Joe Larkin.

Q Did you know Joe Larkin?

A Well, I know him to see him on a truck; that is all.

Q Did you know Edward Larkin?

A I know Edward Larkin.

Q How long had you known him?

A Oh, I know him quite a long while.

Q Did you know him from going to these dances?

A Yes, sir.

Q Are you a member of the Winnoa Club?

A No, sir, I am not a member of any club.

Q You would not be a member of that club?

A No sir.

Q This is quite a tough club, isn't it?

A I couldn't tell you nothing about the club.

Q All nice, respectable people there that night?

A I couldn't tell you. I seen respectable people. Respectable people goes in every place, and here is tough people goes in every place. You can't pick them out.

Q You couldn't tell a tough person?

A Well, you can tell some, yes.

Q And, at any rate, you never took the trouble to inquire the names of the persons who were charged with the shooting?

A No, sir.

Q When, before the defendant's arrest, did you last see him?

A Last saw who? Moore?

Q The defendant, Moore, yes?

A Well, I guess it was a couple of weeks, a week or so.

Q Do you know when he was arrested?

A No sir.

Q What?

A I don't know when he was arrested.

Q You say you saw him a week before?

A Yes, sir.

Q How do you know it was a week before if you don't know when he was arrested?

A Well, I seen him; I didn't go as far as hat to see --

Q When was it you was him?

A I seen him on Forty-second

Street and Broadway.

Q Exactly, but when?

A What?

Q When?

A About a week before he got arrested.

Q When was that?

A That was on a Friday night, or Saturday night.

Q Well, there are fifty-two Friday nights in the year, are there not?

A Yes, sir.

Q Which of the fifty-two Friday nights was it that you last saw the defendant before his arrest?

A I didn't go that far. I only just seen him.

Q Do you know the month?

A No, I don't generally know the month.

Q You don't generally know he month?

A I don't go that far to find out.

Q When did you talk about the case last with any person?

A I was talking about it here the other day.

Q And until the other day you had not spoken to a soul about this case, from the time of the shooting, is that right?

A Yes, sir.

Q The other day, for the first time?

A Yes, sir.

Q And you spoke to some representative of the defendant's lawyers?

A Some lawyers sent me a subpoena, yes sir. I told a part I was there, and was talking to this fellow, this Eddie Larkin, and I didn't see the --

Q When did you say that to any person?

A Oh, I

guess about a week or so ago.

Q A week ago, and give me the name of the person to whom you said that, will you?

A Adie-- I forget his name.

Q It is somebody that you know pretty well, isn't it?

A Yes, I know him pretty well, but I can't just mention his name.

Q Was he connected with the office of the defendant's lawyer?

A I couldn't tell you that.

Q You don't know anything about that?

A No.

MR. WASSERVOGEL: That is all.

RE DIRECT EXAMINATION BY MR. HAROWITZ:

Q Since the shooting, you have seen Moore frequently around the neighborhood, haven't you?

A Yes, I saw him around the neighborhood.

Q And you never knew he was wanted for this murder?

A No, sir.

MR. HAROWITZ: That is all.

RE CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Did you know where Moore lived at any time?

A No, sir.

Q Never knew that?

A No, sir.

MR. WASSERVOGEL: That is all.

BY MR. HAROWITZ:

Q The first time you heard about Moore's connection

with the case was when you heard he was arrested?

A Yes sir.

Q Do you remember how long ago that was?

A No sir.

Q Was it this summer?

A Yes, I guess it was in the summer.

Q In the month of July?

A Yes, around July.

Q And you say a week before he was arrested you saw him on Forty-second Street and Broadway?

A Yes, sir.

BY MR. WASSERVOGEL:

Q You won't say it was not in February, will you?

A I can't tell you when it was.

Q You won't state, just because he suggested July? If I tell you he was arrested in February, you won't say it is not so, will you? You don't know anything about the time, do you?

A No.

By MR. HAROWITZ:

Q But you did learn at one time that Moore was arrested?

A Yes, sir.

Q And whether it was in February or July, you don't know?

A No.

Q And you are positive at the time you learned he was arrested you say him a week before that?

A Yes, sir.

MR. HAROWITZ: That is all.

MAX LAZARUS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your full name?

A Max Lazarus.

Q Where do you live?

A 19 West 112th Street.

Q And what is your business?

A Live poultry.

Q And where is your place of business?

A We are generally all over, Jersey City or Hoboken, but we connect with the West Washington Market.

Q Are you in business for yourself?

A No, sir.

Q Who are you employed by?

A Joseph Cohen.

Q Where is his place of business?

A West Washington Market.

Q How long have you been working for Joseph Cohen?

A A little over seven years.

Q Do you know the defendant, Henry Moore?

A Yes sir.

Q Was he working there with you?

A Yes, sir.

Q When?

A For the past two years.

Q For the past two years?

A Yes, sir.

Q Where did you see him in the past two years?

A Seen him every day at business.

Q Where?

A Down at Hoboken, or Jersey, or wherever we worked.

Q How often would he go to the New York market?

A Two or three times every week, and Saturday we get paid off.

Q Where do you get paid off?

A In Baedeker's saloon, on the corner.

Q Where is that?

A Thirteenth Avenue -- Low Avenue and Thirteenth Avenue.

Q During all this time, did you know that Henry Moore was wanted for murder?

A No, sir.

Q Did you ever hear that he was wanted for murder?

A No, sir.

MR. HAROWITZ: You witness.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say your work is done over in Jersey?

A We work on this side, as well as the other side.

Q In Jersey City most of your work is done?

A Between Jersey, Hoboken, Weehawken and the New York side.

Q I am talking about the Jersey City side. And his hours of work were what?

A We used to work a couple of years ago, we used to work nights.

Q I am talking about the last two years?

A Some times we finished up in the afternoons, from morning.

Q During the day?

A Yes, sir.

Q And was he working under you?

A He was not working under me. I am longer in the business than him, but he was working with me.

Q He was working with you for the past two years over in Jersey?

A For Joseph Cohen.

Q In the business of Joseph Cohen?

A Yes, working for him; he is the boss.

Q Where in New York did he work for you?

A Well, on and off; he was not a steady man with me.

Q He was not a steady man with you?

A No with me, only we have several firms, and we switch men from one firm to another.

Q You can only testify to what you know of your own knowledge?

A Yes, sir.

Q You told us before he did work with you in Hoboken, Weehawken, and other little towns in Jersey?

A For the past two years, yes, sir.

Q No, what I want to know is where he worked with you in the City of New York?

A B&O. 23rd Street, New York Central, 26th Street.

Q What would he do there? Simply make a delivery and go away?

A No, sir, there is no delivery to be made. We were unloading cars of poultry.

Q Simply helping in the unloading of cars?

A That is all we had.

Q At the railroad station?

A At the railroad station.

Q That is all he did?

A Yes, sir.

Q Where was the railroad station?

A New York Central, B&O, that is in the City here.

Q Which one of the New York Central freight depots?

A Which one?

Q Yes, where?

A Right here, at Thirty-third Street.

Q At Thirty-third Street?

A At Thirty-third Street, the New York Central, where we unload the poultry.

Q What Avenue is that?

A Between Tenth and Eleventh, I believe.

Q Do you recall any occasion in the last two years that you saw the defendant there?

A Seen him there?

Q Yes.

A Several times that he has went over there without me.

Q You don't know whether he went over there?

A Positively, positively.

Q Did you see him there?

A No, sir.

Q You did not see him there?

A No, sir, but I knew he was sent there.

MR. WASSERVOGEL: I now ask that this witness's knows the defendant visited places in the City of New York in the last two years be stricken out.

THE COURT: Yes.

RE DIRECT EXAMINATION BY MR. HAROWITZ:

Q You say you never saw him in the City here in the last two years?

A Yes, sir, I did see him here.

Q Where did you see him?

A Well, at work, at the B.&O. and at the New York Central.

Q Did you see him there?

A Positively. We have been there many times. I am transferred from one railroad to another, to keep me working.

Q How many times have you worked with him in the last two years?

A Several times.

Q Was Mr. Baedecker the man who pays off?

A Mr. Baedecker.

Q Who does he work for?

A He is a boss by himself. He has a saloon corner of Thirteenth Avenue and Low Avenue.

Q And what has he got to do here?

A He just helps out Mr. Joe Cohen, in paying off. He cashes the checks at the bank, and gets the cash for him.

MR. HAROWITZ: That is all.

MR. WASSERVOGEL: That is all.

THE COURT: How many more witnesses will you call?

MR. HAROWITZ: I don't know now.

THE COURT: Don't you know how many more witnesses you have?

MR. HAROWITZ: I have ten or fifteen, but I don't know that I will call them all.

HENRY BAEDECKER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A Henry Baedecker.

Q Where do you live?

A Great Kills, Staten Island.

Q What is your business?

A I am in the retail liquor business, in West Washington Market.

Q How long have you been in that business?

A Twenty years.

Q Do you know Joseph Cohen?

A I do.

Q Do you know many of his employes?

A I am one of his employes.

Q Do you know the defendant, Henry Moore?

A I do.

Q How long have you known him?

A Over a year.

Q Where did you see him?

A In my place of business.

Q In the past year?

A Yes, sir.

Q Where? In New York City?

A West Washington market.

Q How often would you see him?

A Every Saturday, sometimes during the week.

Q What was he doing there?

A Getting his pay.

Q Did you pay off the men for Cohen?

A I am his paymaster.

Q You are the paymaster for Cohen?

A Yes sir.

Q How long had you been Mr. Cohen's paymaster?

A Since October, or November, of last year.

Q And you say you have seen this defendant there every Saturday in the last year?

A Every Saturday.

Q Until he was arrested?

A Until then.

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Q And some times during the middle of the week?

A Yes, sir.

Q Do you know what kind of work he was doing?

A He worked in cars, handling live poultry.

MR. HAROWITZ: Your witness.

MR. WASSERVOGEL: No cross.

MICHAEL MONDARE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A Michael Mondare.

Q Where do you live?

A 405 West Thirty eighth Street.

Q You are employed by the parcels post transfer corporation?

A Yes, sir.

Q And they work for the United States Mail?

A Yes sir.

Q Where do you live?

A 405 West Thirty-eighth Street.

Q Do you know the defendant, Henry Moore?

A I know him for about five years.

Q Had you seen him in the last two years?

A Yes sir, about once or twice a week.

Q Where?

A Around the vicinity of 42nd and 34th Streets.

MR. HAROWITZ: Your witness.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say you have known him for the past five years?

A I know him about five years.

Q Then, you must have known him in the year 1908?

A Yes, sir.

Q Where would you see him in the year 1908?

A Well, I can't remember as far back as that.

Q You won't say that you saw him in 1908 at all, will you?

A No, I can't remember as far back as that, no.

Q You won't say he was in the City at that time, will you?

A No, sir.

Q Was he here in 1909?

A I couldn't say that.

Q Can't say that, either?

A No, sir.

Q Can't say whether he was here in 1910, can you?

A No.

Q Do you belong to the Winnoa Social Club?

A No sir.

Q Do you belong to any of these social of dancing clubs?

A No, sir.

Q How did you come to be -- withdrawn. When did you first become acquainted with him, and how?

A Well, he lived in Thirty-eighth Street there.

Q Keep up your voice?

A He lived in Thirty-eighth Street, and through palling through the street, we got acquainted.

Q Was he your pal, or one of your pals?

A No, he ain't my pal.

Q What do you mean by saying "through palling through the streets"?

A Through friends of mine I got acquainted with Mr. Moore.

Q You know other friends of his, I suppose?

A Yes, sir.

Q Can you mention any of the names of his friends?

A I don't know that they ever palled with him. I know some of his friends that knows him.

Q Do you know where he lived?

A No.

Q What?

A No, I do not.

Q Do you know where he lived in 1909, if you do not know where he lived in 1908?

A No, I do not.

Q Do you know where he lived in 1910?

A In fact, I didn't know where he ever lived. I knew he lived somewhere in Thirty-eighth Street.

Q You don't know of your own knowledge, whether his defendant slept at his home, or any place he called home, in New York County?

A I didn't know if he slept home, or was sleeping into a lot.

Q You didn't visit him at any time, and he never visited you?

A No, sir.

Q Can you give us any date when you saw him, any particular day? Can you give us any date when you saw him, any particular day? Can you mention that you saw him in the last year?

A I can't give any particular date.

Q Any month that you saw him?

A I can't remember.

Q How long prior to his arrest did you see him?

A To his arrest?

Q Yes.

A In fact, I didn't know when he was arrested.

Q When did you first hear that he was in the toms awaiting trial?

A I only heard it last week.

Q For the first time?

A First time, yes, yes, sir.

Q How long before last week had you seen him?

A Oh, I didn't see him in months.

Q How many months?

A Four or five months.

Q Four or five months before that?

A Yes, sir.

Q Won't you say it was longer than four or five months?

A No.

Q What?

A No.

Q Before January. Did you speak to him when you saw him?

A Just passing by, I give him the hello.

Q That is all you ever did?

A That is all I ever did.

Q Never entered into any extended conversation with him?

A No, sir.

Q You would simply say "hello" to him, and he would see "hello" to you, and he would go about his business, and you would go about your business?

A Yes, sir.

Q And when you saw him, would it be in the day time, or night time?

A Sometimes days and sometimes early part of the evening, may be after supper.

Q You never made an appointment with him to go out?

A No, sir.

Q And you cannot mention the name of any of his friends who were also your friends?

A A fellow named Williamson, as far as I know. Mr. Cohen.

Q Did you know him in 1908, Mr. Williamson?

A Yes.

Q Have you ever been convicted of any crime?

A No sir.

Q At any time?

A No, sir.

Q You have talked about this case with people, haven't you?

A No, sir.

You knew what the charge was against the defendant, Henry Moore?

A Not until last week; that is all.

Q You knew it then?

A Only last week.

Q Who told you then?

A When Mr. Cohen asked me would I go down to the counsel's office and make a statement.

Q Who is Mr. Cohen?

A Mr. Jacob Cohen.

Q Has he been a witness here?

A I guess he has.

Q What?

A I guess he has; he is outside.

Q You don't know what his connection is with this case?

A No, sir, I do not.

Q You don't know whether he is a friend of the defendant's lawyers, or how he comes into the case?

A No, sir.

Q Didn't you ask him about his interest in Henry Moore?

A He asked me would I come down and make a statement to the lawyers, that I know Henry Moore for the last five years.

Q Did you ask him "what is your interest in Henry Moore"?

A No, I did not.

Q Did you ask him "what have you to do with Henry Moore"?

A I did not.

Q You never told Mr. Cohen "I am a friend of Henry Moore", prior to that occasion?

A No, sir.

Q You were surprised when Mr. Cohen came down and said "I want you to go to a lawyer's office to be a witness for Henry Moore"; weren't you surprised?

A No, I was not surprised.

Q You had not spoken to any one about Henry Moore until Mr. Cohen spoke to you?

A No, sir.

Q Weren't you astonished when Mr. Cohen spoke to you about Henry Moore and asked you to a witness for him?

A No, sir.

Q That did not take you by surprise?

A No.

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Q That did not take you by surprise?

A No.

MR. WASSERVOGEL: That is all.

THE COURT: We will stop here (To the Jury) Do not talk with any one about this case, nor permit anyone to talk with you about it, nor form nor express any opinion thereon, until the case shall finally be submitted to you. Ten thirty sharp in the morning, gentlemen.

(The Court then accordingly took a recess until to-morrow, Friday, October 24th, 1913, at 10:30 A.M.)

THE PEOPLE ETC.

-against-

HENRY MOORE.

New York, Friday, October 24th, 1913.

TRIAL CONTINUED.

JACOB COHEN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A Jacob Cohen.

Q Where do you live?

A 62 Monroe Street Hoboken.

Q What is your business?

A Chicken handler, a handler of chickens.

Q Who do you work for?

A Joe Cohen.

Q Where is his place of business?

A Down at West Washington Market.

Q Are you related to Joe Cohen?

A No, sir.

Q How long have you been working for Joe Cohen?

A Two and one half years.

Q Do you know the defendant, Henry Moore?

A Yes sir.

Q How long have you known him?

A I have known him for quite a while.

Q Had he been working for you at the same place?

A Yes, sir, he had been working with me for pretty near two years, I guess, two years or so.

Q For whom?

A For Joe Cohen.

Q Where did he work?

A He worked on the D. L & W.

Railroad.

Q What street is that?

A That is over on Erie Street, I believe, between Hoboken and Jersey City, and he has worked B. & O. at Twenty-fifth Street and Eleventh Avenue.

Q Here in this City?

A Yes, sir, and he has worked on the New York Central, in Thirtieth Street.

Q You have worked together continuously for the last two years?

A Yes, he was worked in the same gang as I have.

Q Do you remember the night Joe Madden was killed?

A Yes, sir.

Q Were you at that ball?

A Yes sir.

Q What time did you get there?

A About eight o'clock, I believe.

Q Who was with you?

A Henry Moore.

Q Where did you meet Henry Moore that night?

A on the corner of Thirty-eighth Street.

Q And what Avenue?

A Ninth Avenue.

Q And did you go there together?

A Yes, sir.

Q What time did you get there?

A I don't know. It must have been around eight o'clock, or a little after, I ain't sure.

Q Did you have tickets?

A Yes, sir.

Q Who did you get them from?

A From some of Larkin's friends.

Q And was anybody else with you besides Moore?

A That went up to the racket?

Q With you?

A Up where?

Q Up to the racket?

A No, just me and Moore left the corner alone, and we went up to the racket.

Q And who had the tickets, you or Moore?

A I did.

Q When you got there how long did you stay in the hall?

A About half an hour, I should judge, then we --

Q And where did you go after that?

A We went to Mc-Dermott's cafe, 38th Street and Ninth Avenue, for a drink.

Q Who went with you?

A Me and Henny.

Q 38th Street and Ninth Avenue, you say?

A Yes, sir.

Q How long did you stay there?

A Well, I don't know; around half an hour, maybe ten or fifteen minutes, I guess, or twenty minutes; I ain't sure which; we had a few drinks there.

Q Where did you go then?

A Went back to the hall.

Q With whom? With Moore?

A With Moore.

Q How long did you stay at the hall then?

A Around half an hour again, and it was warm up there.

Q Is there a barroom in that hall, where you can buy a drink?

A No, sir.

Q If you want a drink, you have to go downstairs?

A You have to go to some saloon, yes, sir.

Q And people go in and out?

A Yes, sir.

Q You stayed there about half an hour and then you left again?

A Yes, sir.

Q And where did you go then?

A We went over to Leo Reddy's place, across the way, McGraw's saloon.

Q What street?

A 36th Street and Ninth Avenue, across from the dance hall.

Q The dance hall is on one corner?

A The dance hall is on the north corner, and the saloon is on the south corner.

Q The same street?

A Yes, sir.

Q What time did you go in the saloon, about?

A Well, I should judge around half past nine or so, I don't know; I ain't sure of the time. Between half past nine and ten o'clock.

Q Which part of the saloon did you go in?

A We went through the hall, the side entrance, and sat down in the back room.

Q Did you meet anybody there?

A Yes, sir, met two friends of mine.

Q Who were they?

A A fellow by the name of Louis Altier and a young man named William Silver.

Q What happened in there?

A What happened in there?

Q Yes. I mean did you have any drinks, or did you talk?

A As soon as we come in, they give us a "Hello" -- "Hello, Jim, Hello Henny. What are you having? Just in time to have drink." We sat down with them, and we had one drink and then I ordered up another drink, and while the bartender was serving us with the second drink, he was inside getting them drinks

ready, when we heard shots. It seemed as though it come from across the street.

Q That is, across the way?

A Across the way.

Q How many shots did you hear?

A I don't. know; two or three; I was not sure.

Q What did you do when you heard the shots?

A We run out to the door, to see what was the matter, and we didn't see nothing happen just at the minute, and about two or three minutes later we saw a bunch of fellows and girls coming from the hall, from the dance hall, all running out, all excited. I grabbed some fellow by the arm, and I said to him, "What is the matter?" He says, "A fellow by the name of Larkin got killed upstairs" -- not killed, but shot, and I says, "Yes". And I says to Moore and the other two friends, "Come on, we better get out of here, because it ain't healthy to stay around here; somebody is liable to pick you up or something"; and we walked to 38th Street and Ninth Avenue, and me and Moore went home, and so did the other two young men, I guess.

Q Where did you live at that time?

A 452 West 38th Street.

Q Where did Moore live?

A 450.

Q Where did the other two men go Silver and the other man?

A Where did they go?

Q Yes.

A I believe they went home, but I ain't sure, because I didn't go around looking for them, after I went

home, Silver lived in 39th Street at the time, and Altier lived right across the way, on the south side of 38th Street.

MR. HAROWTTZ: That is all.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Now, your name is what, did you say?

A Jacob Cohen?

Q Jacob Cohen?

A Yes, sir.

Q And you live at 452 West 38th Street now?

A No, sir. I did at the time.

Q Where do you live now?

A 62 Monroe Street.

Q How long did you live at No. 452 West 38th Street?

A For sixteen or seventeen years.

Q And when did you first make the acquaintance of Henry Moore?

A I knew Moore; I went to school with Moore.

Q Did you know Moore in the year 1908?

A Why, I knew him in that year, but I never went with Moore at that time.

Q Did you know him in 1905?

A No, sir; I knew him, I will tell you, but I never went with him till two years ago, since he began to work with me.

Q Now, you say that you went to school with Moore?

A Yes, sir.

Q How old are you?

A 24.

Q How old is he?

A Well, I couldn't tell you, but I believe he is a year or two younger than I am; I ain't sure.

Q And, of course, you remember what school you attended with him?

A Yes, sir.

Q What school was it?

A 37th Street, bet we en Tenth and Eleventh Avenues.

Q And you remember the years you attended school there with him, don't you?

A Not exactly.

Q No.

A No.

Q Can't you give us some idea on that subject?

A It must be all of 12 or 13 years ago, I believe, 10 or 12, I couldn't exactly say what year.

Q You left school before 1905, didn't you?

A Yes, sir.

Q You did not see him during the year 1905, at any time, did you, that you can recall at the present time?

A Well, I might have seen him but I don't remember.

Q 1906?

A No, I told you I didn't go with him at that just time, I just knew him from seeing him around, where I lived.

Q He was your school companion?

A Well, yes, but I never associated with him much.

Q Why not? You were not ashamed of him, were you?

A No, but I might have talked to him and said, "Hello" to him, but I never went with him, or anything like that.

Q And you won't say whether you saw him in 1908 or not, will you?

A No, I ain't sure.

Q Have you ever been convicted of any crime?

A No, sir.

Q At any time?

A No, sir.

Q When did you first go to work with the defendant the same place?

A I didn't go to work with him.

Q I thought you told us before that you worked in the same place with him?

A Yes, he come to work after I did.

Q Did you obtain the employment there for him?

A Why, no.

Q You had been working there for sometime?

A I had been working there.

Q When he happened to come there to work? A Yes, sir.

Q You ware surprised to see your old school chum coming to work at the same place you were working, weren't you?

A Well. I wasn't surprised; there was nothing surprising.

Q Nothing surprising about that?

A No.

Q He continued to work with you for about two years?

A Yes, sir.

Q And during those two years you became very chummy with him again?

A Yes, sir.

Q And you would go out to dances with him at different times?

A We didn't go out, because I ain't a fellow that dances much.

Q You did go to dances with him at times?

A Once in awhile.

Q Once in awhile, very well, and you remember going to a dance with him on the night of Madden's death?

A Yes, sir.

Q Of course, you remember when that was?

A December 10th, I believe.

Q You remember the date very well, don't you?

A Well, it has been c called to my memory since then.

Q Been called to your recollection frequently since then, hasn't it?

A Yes, sir.

Q And you say that Moore did not give you the tickets for this affair, that some friend of Larkin's gave you the tickets?

A Yes sir.

Q DO you know the name of the man who gave you the tickets?

A No, I can't remember now.

Q You don't remember that?

A No,

Q You remember all the other details of this affair perfectly, don't you?

A What other details do you mean?

Q About the shooting?

A Why, certainly, I remember that. A friend of mine was accused of it. Why shouldn't I remember it?

Q But you don't remember who it was that gave you the tickets for this affair, do you?

A No, sir, I know it was some of Madden's friends, because they came over there that night.

Q Did you know Madden, the man that was shot?

A No, sir.

Q Did you ever see him before that night?

A No, sir.

Q Did you see him that night?

A Yes, sir.

Q What time did you first see him?

A I first saw him when I came into the dance hall.

Q And did you talk with him?

A No, sir.

Q Did you see a man known as Roxy Walsh "yes" or "no"?

A Yes.

Q DO you know Walsh?

A I know him by sight.

Q Only by sight. Did you talk with Walsh?

A No, sir.

Q Was Walsh there when you arrived with Moore?

A Yes.

Q And did Moore take part in this conversation which you had with Walsh?

A No, sir.

Q How far away was Moore from you --

A I didn't have no conversation with Walsh.

Q You didn't talk with Walsh?

A No.

Q And how long did you see Walsh in the hall before you went out?

A How long did I see Walsh in the hall?

Q Yes. A I don't know; I just saw him for a minute, and I don't know where he went.

Q Did you see him go out?

A No, sir.

Q Did you notice whether he was alone during the time that you saw him, or whether he was accompanied by others?

A He was alone when I saw him. I don't know how many friends he had there with him.

Q You arrived at this hall about what time?

A About eight o'clock or so, a little after eight, I ain't exactly sure.

Q And Moore was with you as you said?

A Yes, sir.

Q You remained there about half an hour?

A Yes, sir.

Q Went out to a saloon for a drink?

A Yes, sir.

Q And where are was the saloon?

A 38th Street and Ninth Avenue.

Q Where was this dance hall?

A This dance hall was

at 36th Street and Ninth Avenue.

Q 36th Street and Ninth Avenue?

A Yes, sir.

Q And you went down to 38th Street and Ninth Avenue to get a drink?

A Yes, sir.

Q You passed several other saloons on your way down, didn't you, or on your way up?

A This saloon at 38th Street and Ninth Avenue, the Bartender is a personal friend of mine, that is why we went to see him.

Q That is not Cunningham's saloon, is it?

A What?

Q That is not Cunningham's saloon?

A No, this is McDermott's saloon.

Q You know Cunningham?

A Do I know him?

Q Yes. A I know him by sight, not personally.

Q He is another man you know by sight?

A Yes, sir.

Q Do you know Hugh Corrigan?

A Yes, sir.

Q Know him by sight?

A No, I know him well.

Q You know Joseph Sonner?

A Yes, sir.

Q DO you know him well?

A Yes, sir.

Q He is a friend of yours?

A Yes, sir.

Q Did he accompany you and Moore to the dance hall?

A No, sir.

Q What time did you see them at the dance hall?

A I saw them when I come in there.

Q Did you talk to them?

A "Hello", that is all.

Q And how far was Moore away from you when you said "Hel-

lo", to them?

A Moore was right next to me.

Q What did Moore say to them?

A Moore?

Q Yes.

A Nothing.

Q Not a word?

A No.

Q He knew them too, didn't he?

A What? I don't know whether he knew them or not; I guess he knew them.

Q He did know them. But he said nothing to you?

A No, sir.

Q And he was standing right next to you at the time?

A He was standing right next to me, but he was not looking at what I was doing.

Q You went into this saloon and you remained there how long?

A 15 or 20 minutes.

Q And then you came back to the hall?

A Yes, sir.

Q And again Moore accompanied you to the hall?

A Yes.

Q You went upstairs?

A Yes, sir.

Q And you remained there how long?

A I don't know; there was two dances was over, and we -- it must have been about half an hour; I can't exactly tell you how long.

Q So that brings us down to about half past nine?

A Yes, sir.

Q And you thought it was necessary to go out for another drink; is that it?

A Yes, sir.

Q How many drinks did you have that night all told, can you tell us?

A Four or five.

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Q Whiskies?

A No, sir.

Q What?

A Beer.

Q And Moore again accompanied you to a saloon?

A Yes, sir

Q Did you go back to the same saloon, on Ninth Avenue and 38th Street?

A No, we went into McGraw's.

Q Where is that?

A Right across the way from the dance hall; Leo Reddy was bartender there.

Q This time you did not go to the saloon where you had a friend who was the bartender?

A This bartender in McGraw's is a friend of mine.

Q McGraw's bartender is also one of your friends?

A Yes, sir, Leo Reddy.

Q All the bartenders in that immediate neighborhood are your friends?

A They don't have to be my friends, but I know them from being around that neighborhood so long.

Q And you frequented all the saloons in that neighborhood during the time you lived there?

A I went in every once in awhile, yes.

Q And you went across the street into this saloon?

A Yes, sir.

Q And Moore was with you?

A Yes, sir.

Q Did you see Roxy Walsh at that time?

A Did I see him?

Q Yes.

A No.

Q Who else was in the saloon that you now remember?

A There was a fellow by the name of Louis Silver and -- Louis Altier and William Silver.

Q Do you know where Silver works?

A Do I know where he works?

Q Yes.

A I believe he works in 14th Street somewhere,.

Q How long had you known Silver?

A I had known Silver quite a while.

Q How long?

A 7 or 8 years, I believe.

Q And how long have you known Altier?

A Who? Altier?

Q Yes.

A About the same time.

Q I suppose you spoke to those two men that you saw in the saloon?

A Did I speak to them?

Q Yes. A They spoke to us first. When we come in they give us a "Hello," just as soon as we came in.

Q They were friends of Moore's as well as friends of yours?

A Yes, sir.

Q And you all had drinks together?

A Yes, sir.

Q Did you go back to the dance hall?

A Did we go back to the dance hall?

Q Now, you understand me don't you, when I ask a question?

A Well, I want to make sure.

Q Did you go back to the dance hall?

A No, we did not go back to the dance hall after we were over in that saloon.

Q How long did you remain in the saloon when something special happened?

A How long were we in there? About 10

minutes, I should Judge.

Q And then what happened?

A And then we heard shooting, which seemed to come from across the way, shots.

Q Shooting out on the street?

A What?

Q Shooting out on the street?

A Well, I couldn't tell whether it was out on the street, or where it was, but we went out to see.

Q Were the doors of the saloon opened?

A What doors do you mean?

Q The doors of the saloon leading into the street?

A No; there is a hallway; you enter a hallway and you turn around, like that (illustrating), and go into the back room of the saloon.

Q And were you in a room in the back of the saloon at the time you heard the shooting?

A Yes, sir.

Q Sitting down at a table?

A Yes, sir.

Q And you came right out in the street, to see what the trouble was?

A Yes, sir. the four of us ran out.

Q All of you?

A Yes, sir.

Q Moore was with you, of course?

A Yes, sir.

Q You saw some people coming out of the dance hall?

A Well, it was about two or three minutes after when we saw a crowd coming down all at once.

Q Did you see Cunningham there?

A Did I see Cunningham? No.

Q Did you see Cunningham blow a police whistle, or hear

hint blow a police whistle?

A No, sir.

Q Did you hear anybody blow a police whistle?

A Well, I might have hoard it, but it might have escaped my attention at the time.

Q No mistake about having heard the shots?

A No, because you could hear them distinctly.

Q You could hear a police whistle distinctly, could you?

A Well, I don't know whether you can or not.

Q You have never heard a police whistle blow?

A Yes, sir, I have heard them once or twice.

Q Once or twice?

A Yes, sir.

Q And you remained standing in front of this McGraw's saloon for how long?

A Right by the railing.

Q How long?

A For about three or four minutes or so.

Q Then somebody said, "It is not very healthy around here, we better get out"?

A No, sir, nobody said that. I said that to them, the fellows I was with.

Q You said "It is not healthy around here, somebody is liable to pick you up"; isn't that what you said on direct examination?

A Yes, I said "We are likely to get in trouble".

Q "Somebody is likely to pick you up"; that is what you said on your direct examination? Isn't that what you said?

A When? Yes, I said that.

Q You said that?

A Yes, sir.

Q You hadn't done anything wrong had you?

A No.

Q You know Moore hadn't done anything wrong?

A No.

Q And you know your friends Silver and Altier had not done anything wrong?

A No.

Q Still, you, a respectable working boy, or man, were afraid somebody might pick you up?

A I know in my heart and soul that anybody who stands around things like that is liable to be picked up and lay in jail for four or five weeks and then be discharged, and I didn't, feel like laying in jail.

Q That has never happened to you?

A No, sir. But I have heard about it.

Q And it never happened to your friend Silver or your friend Altier, that you know of?

A No, sir.

MR. HAROWITZ: Objected to.

Q At any rate, you went away?

A I went home.

Q Your home was where?

A 452 West 38th Street.

Q What time did you arrive home?

A I should judge around 11 o'clock, I can't tell you the time now.

Q Where did Moore live at that time?

A At 450, right next the house.

Q And, of course, you saw him go upstairs?

A Yes, sir.

Q Did you see Moore the next day?

A Did I see him, yes, sir.

Q Was he working with you at that time?

A Yes, sir.

Q Saw him at work the next day?

A Yes, sir.

Q Did you talk about the shooting of the night before?

A Did we talk about the shooting?

Q Now, listen to me.

THE COURT: Answer the question. Do not ask them over. When a question is asked, you repeated. That is not necessary. Now, answer the question.

THE WITNESS: I want to make sure I hear right.

THE COURT: You listen to the question and then answer.

Q (Question read by stenographer as follows: "Q Did you talk about the shooting of the night before"?)

A Yes, sir. we said something about it.

Q By that time you had heard that Roxy Walsh and Henry Moore had been charged with the shooting?

A No, sir, I heard that there was a man by the name of Roxy Walsh done the shooting, but nothing about Moore at all.

Q When was the first time that you heard that Moore had been charged with the shooting?

A When he was arrested.

Q And when was that?

A Oh, it must be about three or four months ago.

Q That was the very first man you knew anything about his being charged with the shooting?

A Yes, sir.

Q And did you visit him in the Tombs after that?

A Yes. I visited him a few days after.

Q And, of course, you talked about the case with him?

A Yes, sir.

Q And you have talked about the case with other people since then?

A Yes, sir.

Q With Mr. Harowitz and others, of course?

A Yes, sir.

MR. WASSERVOGEL: I think that is all.

RE-DIRECT EXAMINATION BY MR. HAROWITZ:

Q As a matter of fact, you took a great deal of interest in Moore's defense, didn't you?

A I certainly did.

Q You went around, at my request, and got the witnesses?

A Yes, I certainly did because Moore was a personal friend of mine, and I travelled around with him for two years. That is why I took so much interest in him.

MR. HAROWITZ: That is all.

RE-CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say that you knew the bartender in the saloon cross the way?

A Yes, sir.

Q And you say his name was what?

A Leo Reddy.

Q Reddy?

A Yes, sir.

Q Have you seen Reddy recently?

A Yes, sir.

Q When?

A Why, I seen him on Tenth Avenue and 42nd Street.

Q Did you speak to him?

A Yes, sir.

Q Speak to him about this case?

A Yes, sir.

MR. WASSERVOGEL: That is all.

Q Reddy is outside, isn't he?

A I believe he is I ain't sure.

Q You have seen him in my office, too?

A Yes, sir.

BY MR. WASSERVOGEL:

Q Do you know where Moore has been living recently, before his arrest?

A I believe he was living out in Jersey, I guess.

Q Living in Jersey?

A Yes, sir.

BY MR. HAROWITZ:

Q That is where he was working?

A Yes, sir, that is where he was working.

Q How long has he been living there?

A How long?

Q Yes.

A Oh, about a year and a half.

Q Do you remember when his father died?

A When his father died?

Q Yes. About how long after this shooting of Madden did his father die?

A About three months, I think.

Q And after that he moved out?

A Yes, sir.

Q That is the time Moore came to Jersey, where he was working?

A Yes, sir.

BY MR. WASSERVOGEL:

Q You were asked whether you knew where Moore lived before his arrest?

A Before his arrest?

Q Yes, do you know?

A Yes, he lived in Jersey, with a woman by the name --

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Q Where in jersey?

A Newark Street, I believe.

Q In Jersey City?

A No, Hoboken.

Q And had been living there how long?

A Over a year.

BY MR. HAROWITZ:

Q This is right across the ferry, isn't it?

A Yes.

WILLIAM SILLER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A William Silver.

Q Where do you live?

A 643 Tenth Avenue.

Q What is your business?

A I am a butcher,

Q Butcher for whom. Are you in business for yourself?

A No, sir. I work for the Atlantic Hotel Supply Company, 676 Hudson Street.

Q How long have you worked for them?

A A little over a year.

Q Where did you work before that?

A Horace & Demarest.

Q Where is their place of business?

A 696 Hudson Street.

Q How long did you work for them?

A Three years.

Q Where did you work before that?

A Before that I worked in a hat store.

Q How long? A Four years and nine months.

Q What was the name of that concern?

A M. Batt, 549

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Eighth Avenue,

Q DO you know the defendant, Henry Moore?

A I know him by sight,

Q How long have you known him?

A Know him about three or four years,

Q Do you remember the night Joe Madden was killed?

A Yes, sir. I recollect that night.

Q Did you on that night -- withdrawn. Do you know a man named Louis Altier?

A Yes, sir.

Q Were you with him that night?

A Yes, sir.

Q Where did you meet Louis Altier?

A 38th Street and Ninth Avenue.

Q what time?

A About eight o'clock.

Q Where did you go?

A Took a walk up Eighth Avenue and went into a moving picture place.

Q Where is that moving picture place?

A 34th and 35th Street and Eighth Avenue.

Q Did you go to this dance of the Winnoa Club?

A No, sir.

Q Or the dance given by Larkin?

A No, sir.

Q And after the moving picture place where did you go?

A We took a walk down Ninth Avenue, on our way home, and stopped in and had a drink.

Q Where did you stop in?

A 36th Street and Ninth Avenue.

Q DO you know what time you got there, about?

A About half past nine.

Q And did you have any drinks?

A Yes, Sir.

Q Did you at any time that evening see the defendant, Henry Moore?

A Yes, sir.

Q Where did you see him?

A In the saloon.

Q What time did he come in there ?

A He come in there around ten o'clock.

Q Who did he come in there with?

A With another friend of his, Jake Cohen.

Q This man you just saw walk out of here?

A Yes, sir.

Q And when the defendant and Jake Cohen got in there you and your friend Altier had already been there; is that it?

A Yes, we had been there.

Q And you knew Moore and you knew Cohen?

A Yes, sir. by sight.

Q Did you get talking to him?

A I asked them to have a drink.

Q Did they sit down at your table?

A Yes, sir.

Q Did you have any drinks?

A We had one drink.

Q What happened then?

A And Jake Cohen asked us to have another drink and while the second drink was being served we heard some shots. They seemed to come from across the street.

Q How many shots did you hear?

A Well, I won't say sure, I Just heard some shots.

Q What did you do when you heard the shots?

A We got up from the table and walked outside, out there a couple of

minutes, and we seen some fellows and girls coming out of a hall across the street.

Q And did you learn who was shot?

A I heard, I asked several people and got no answer. Afterwards we heard it was a party by then name of Larkin.

Q Where did you go after that?

A We went up Ninth Avenue as far as 38th Street and went home.

Q Are you positive, Mr. Silver, that at the time you heard the shots the defendant Henry Moore, was in that saloon with you, Altier and Cohen?

A Yes, sir.

MR. HAROWITZ: That is al.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Are you a member of the Winnoa Social Club?

A No.

Q Are you a member of any social club?

A No, sir.

Q How long have you been living in the neighborhood of 36 th Street and Ninth Avenue?

A About 18 years.

Q How long have you known this defendant, Moore, by sight?

A About three or four years.

Q When did you first come to know him by sight?

A Standing talking with a friend of mine, he passed by and said, "Hello, Henny". I asked him "Who is Henny?" And he told me his name was Henny Moore.

Q who was the friend?

A That I was with?

Q Yes.

A I don't remember.

Q You don't remember that?

A No.

Q But you remember the occasion very well, don't you?

A How I met him?

Q Yes.

A I had seen him long before that.

Q You had seen him long before that?

A Yes, sir. but didn't know him.

Q But you were not introduced to Henny Moore at that time, were you?

A No, sir.

Q And that, you say, was about three or four years ago?

A Yes, sir.

Q How often did you see him after that?

A Oh, occasionally, once in awhile, once a week, sometimes.

Q But you would not speak to him, would you?

A No, just say hello to him when he passed and he would say hello to me.

Q You had not been introduced to him before that?

A No.

Q And still you would say hello to a man whom you had never spoken to?

A Had never spoken to.

Q And you had never spoken to him until the night when you saw him in the saloon?

A No, sir.

Q And you had never taken a drink with him before that night?

A Not that I remember.

Q That was the very first night in your life that you ever had a drink with Henny Moore; that is right, isn't it?

A Yes, sir.

Q And you only knew this Jake Cohen by sight?

A I knew him to talk to.

Q You have known him for how long?

A Since seven or eight years.

Q And when they came in that night you immediately invited them down to have a drink?

A I didn't ask them to the fellow with me said, "You are just in time to have a drink with us".

Q It was always in time when you fellows were together to have a drink, wasn't it?

A What do you mean.

Q Well, at any rate, you sat down together, in what part of the barroom?

A It was in the back room; it was a Sunday night.

Q This was a Sunday night was it?

A Yes, sir.

Q The saloon was open? And How many drinks did you have together?

A The four of us?

Q Yes, the four of you?

A Had one.

Q One apiece?

A Yes, sir.

Q Did anyone else treat after that?

A No, sir.

Q There was only one round of drinks?

A Yes, sir.

Q You are positive of that, of course?

A Positive.

Q Cohen did not treat?

A He had just ordered a drink.

Q Your friend did not treat after that, did he?

A He bought the first drink, when the two of us were alone.

Q I mean, after the two men came?

A No, sir.

Q You had one drink and only one drink?

A Yes, sir.

Q And of course, you remember what time this was?

A pretty near what time it was.

Q Well, what time was it?

A When we had the first drink.

Q No, when these two men came in?

A Oh, I judge close on to ten o'clock.

Q Before ten or after ten?

A Well, it was around ten; I don't know whether it was before, or after.

Q Give us your best judgment on that, before, or after?

A I couldn't tell you.

Q How long had these two men been sitting with you at the table when something happened on the outside?

A About 15 minutes.

Q You heard pistol shots?

A Yes, sir.

Q You don't remember whether it was two or a dozen, do you?

A No.

Q You don't remember whether you heard a police whistle at that time?

A Heard a police whistle when we got outside.

Q You did?

A Yes, sir.

Q Did you see the person who blew the police whistle?

A No, sir.

Q Did you see where the sound of the police whistles came from?

A Right across the street.

Q Was it a policeman that blew that whistle, do you know?

A I don't know.

Q You don't know anything about that. Were there any people standing in front of the dance hall when you came out

of the saloon?

A Some coming down about two minutes after we came out of the saloon. I seen them run out of the hall.

Q Do you know a man named Cunningham?

A I know him by sight, Yes, sir.

Q Were you here yesterday?

A No, sir.

Q Have you ever been in Cunningham's saloon?

A Not that I know of.

Q Have you ever been in this dance hall before?

A No.

Q Did you know Joe Larkin at that time?

A I didn't know him to speak to.

Q Did you ever see him before?

A No; I have heard of him.

Q You have heard of him, but you did not even know him by sight?

A No, sir.

Q But when you heard that a man named Joe Larkin had been shot, you knew who was meant by Joe Larkin?

A No, I just heard of Larkin being shot.

Q Did you know any of the Larkins at that time?

A I didn't know him, no, sir.

Q And all four of you were standing outside in front of the saloon, weren't you?

A Yes, sir.

Q You frequently go into that saloon, don't you?

A Every time -- once in awhile, when passing by, I stop in there.

Q The bar keeper is a good friend of yours, too, I suppose?

A Know him by sight, from serving us with drinks.

Q Do you know his name?

A I have learned his name since.

Q Have you been in that saloon since the night of the shooting?

A Yes, sir.

Q How long were you standing in front of the saloon opposite the dance hall when you went away?

A Stayed about ten minutes.

Q And how did you come to go away? Why did you go away?

A I thought the best place was home.

Q Was it because you heard Cohen say "This is not a healthy place to stand around; we might be picked up?" Did you hear Cohen say that?

A I did not.

Q You were standing right near Cohen at the time?

A Yes.

Q If Cohen says he did say that, you won't dispute it, will you?

A No.

Q At any rate, you did go away?

A Yes, sir.

Q And you went straight to your own home?

A Yes, sir.

Q Where was your home?

A 265 West 39th Street.

Q Do you still live there?

A No, sir.

Q Where do you live now?

A 643 Tenth Avenue.

Q That is right near there, isn't it?

A Yes, sir.

Q Did you see Henry Moore the next day?

A I didn't.

Q Did you see him the next month?

A YES, I seen him within the mo nth.

Q And where did you see him?

A Around the neighborhood.

Q Did you talk to him?

A No, Just said "Hello".

Q Just passed him by?

A Yes, sir.

Q Did you at any time speak to Henry Moore about this shooting?

A NO, sir.

Q When for the first time did you hear that Henny Moore was one of those charged with the shooting?

A When he was locked up.

Q Not until then?

A No, sir.

Q When for the first time did you hear the names of any persons who were charged with this shooting?

A Didn't hear of anybody being charged with the shooting until Henry Moore was locked up.

Q Weren't you interested to find out who it was that did this shooting?

A No, sir.

Q Paid no attention to that at all?

A No, sir.

Q But when you heard that Henry Moore had been charged as one of the persons who had done this shooting, did you call to see him at all?

A NO, sir.

Q Did you talk with anybody about it?

A Why, Yes, sir.

Q Who did you talk to?

A After I read it in the paper, I met Louis Altier on the corner, and I asked him did he read about it, and he said "Yes". I said "What do you think about that?" I said, "DO you remember Henny Moore was with us, having a drink, at the time the shooting occurred?" He said, "Yes". A few days ago, Jake Cohen came down and asked us did we remember that and I said. Yes, sir", and he said,

"Will you come down to the counsel's office and tell us what you know?" I said, "Sure".

Q Will you give me the name of the paper that had all the details of this shooting that you read?

A I have read it in the World.

MR. HAROWITZ: He speaks of the arrest.

Q Will you give me the name of the paper containing an account of the arrest, which also contained a full account of this shooting?

A NO, sir.

Q What?

A No, sir.

Q You say you read it?

A I read of Henry Moore's arrest.

Q You didn't know what he was arrested for from the article which appeared in the newspaper?

A It didn't give a full account of the shooting. It give an account of some shooting he was arrested for.

Q And you assumed that because Henry Moore was arrested that he was arrested because of this shooting, is that it?

A Yes, sir.

MR. WASSERVOGEL: That is all.

REDIRECT EXAMINATION BY MR. HAROWITZ.:

Q Didn't the paper say he was arrested charged with killing Larkin?

A Yes, sir.

Q You said, in answer to the District Attorney's question, that you did not know Larkin, and were afraid of him.

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Why were you afraid of him?

A I hoard they were tough characters.

Q The Larkins?

A Yes, sir.

Q You were never in trouble before?

A No, sir.

Q Never arrested?

A No, sir.

Q You had nothing to fear, to go away from that saloon after the shooting?

A No, sir.

Q You stood around that saloon, you say, for about ton minutes?

A Ten minutes.

LOUIS ALTER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A Louis Altier.

Q Where do you live?

A 358 West 38th Street.

Q How long have you been living there?

A Around three years.

Q And what is your business?

A Printer.

Q Where?

A Vreeland Advertising Press.

Q Where is their place of business?

A 350 West 38th Street.

Q How long have you been working for them?

A A little over a year.

Q Where did you work before that?

A Another printer in 26th Street; I can't remember the name.

Q As what?

A printer.

Q What number?

A 147 West 26th Street.

Q How long did you work there?

A About two years.

Q Have you ever been in trouble in your life?

A No, sir.

Q Do you know the defendant, Henry Moore?

A Yes, sir.

Q How long had you known him?

A Oh, about three or four years.

Q Do you know the last witness on the stand, William Silver?

A Yes, sir.

Q How long have you known him?

A I have known him for about --well, I know him a long while, I couldn't say how long.

Q You had been pals?

A Yes, sir.

Q Do you remember the night that you heard some shooting?

A Yes, sir.

Q Did you meet Silver that night?

A Yes, sir.

Q What time?

A Around eight o'clock.

Q Where did you go with him?

A We went down to a moving picture show in Eighth Avenue, between 34th and 35th Street.

Q But after you left the moving picture show where did you go?

A We walked up and stopped in McGraw's saloon, 36th Street and Ninth Avenue.

Q And what time did you get there about?

A It must have been around between nine and half past nine.

Q And did you have any drinks?

A Yes, sir.

Q Do you remember seeing Henry Moore that night?

A Yes.

Q Where did you see him?

A He came in there after we had the first drink.

Q What time did he come in there?

A Well, I should judge around some where's between half past nine and ten.

Q Who did he come in with?

A Jacob Cohen.

Q Do you know Jacob Cohen?

A yes.

Q How long have you known him?

A Known him a long while.

Q And as they came in, did you speak to him?

A Yes, sir.

Q Did you ask him to have a drink?

A Yes, sir.

Q And he sat down at your table?

A Yes, sir.

Q And how many drinks did you have?

A We had one drink, and we ordered the second.

Q Was the second drink served?

A It was just being served when we heard several shots fired.

Q Tell the jury in your own way what you heard?

A I and Billy Silver went to a moving picture show on Eighth Avenue --

Q Now, we have that. You say you heard the shots?

A Yes, sir.

Q How many shots did you hear? DO you remember?

A About three or four.

Q And what happened after that?

A After that, no more than we heard the shots, we ran outside, and in a few minutes

I seen a lot of people running out of the hall across the street, and we inquired, and we learned that someone by the name of Joseph Larkin had been shot. After we heard what the trouble was, we went about our way, walked up as far as 38th Street and Ninth Avenue, where I lived, and left the rest and they sent about their own business, home.

Q At the time you heard the shots, you are positive you were in that saloon with Moore and those others?

A Yes, sir.

Q You are not a member of the Winnoa Club?

A No, sir.

Q Or any of those clubs around there?

A No, sir.

MR. HAROWITZ: That is all.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Now, you say Altier, that you have known Henry Moore for about three or four years?

A Yes, sir.

Q Where did you first make his acquaintance?

A I have known him from the neighborhood. I have been living around there for a period of about ten or 12 years.

Q Talk up louder. These gentlemen want to hear you. Three or four years?

A Yes, sir.

Q And would you pal with him?

A well, I often have been in his company, Yes, sir.

Q Very frequently in the last three or four years?

A Yes, sir.

Q Of course, you know where he worked?

A Yes, sir.

Q And know where he lived in the last year?

A Yes, sir.

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Q Where did he live in the last year?

A In the last year, he lived in Jersey.

Q And before he moved over to Jersey, where did he live?

A In West 38th Street,

Q During the time that you knew this defendant Moore so intimately did you know that he was carrying a gun?

A No.

Q What?

A Never knew him to carry a gun.

Q You don't recognize this as his gun, do you (showing witness People's Exhibit No. 4)?

A No, sir.

Q You don't carry a gun, of course?

A No, sir.

Q None of the young men that go with you carry guns?

A No, sir. don't travel with such.

Q You wouldn't travel with anybody that carries a gun?

A No, sir.

Q You wouldn't have such a man as your chum?

A No.

Q And Moore was a good friend of yours?

A pretty good friend, Yes, sir.

Q So was Silver?

A Yes, sir.

Q Jacob Cohen?

A Yes, sir.

Q Did you have an appointment to meet Silver that night?

A Yes, sir.

Q But you had no appointment to meet Moore, did you?

A No, sir.

Q Met him by accident?

A Accident.

Q You didn't know that they were -- Moore and Cohen were coming into the saloon where you were?

A No, sir.

Q You have been a frequent visitor of this saloon, haven't you, a frequenter of it?

A Occasionally, Yes, sir.

Q You knew the bartender very well?

A By going in there once in a while.

Q What?

A By merely going in there once in a while.

Q You knew a number of other bartenders in that neighborhood?

A I don't make a practice of it.

Q But you do know a number of other bartenders in that neighborhood?

A Yes, sir.

Q And you say you arrived in this saloon at about half past nine, was that it?

A Around half past nine, Yes, sir.

Q And how long were you in there before these two men, Moore and Cohen, came in?

A A period of about 15 or 20 minutes or half an hour.

Q You are not a member of the Winnoa social Club?

A No, sir.

Q Or the Sullivan Club?

A No, sir.

Q Or any of the other club over there on the west side?

A No, sir.

Q Of course, you don't know what clubs the defendant belongs to?

A I don't know if he belongs to any.

Q And the four of you sat down at a table and had a drink?

A Yes, sir.

Q And you were sitting there for a few minutes when you heard some shooting on the outside?

A Yes, sir.

Q You were in the back room of the saloon, I take it?

A Yes, sir.

Q You didn't know where the shooting was?

A It appeared to come from across the street.

Q It was not out on the street, was it?

A No, sir.

Q At the time you heard the shooting, did you also hear a police whistle?

A A short while after.

Q Did you see the person who blew the e police whistle?

A In the excitement, I didn't take notice.

Q In the excitement, could you tell whether there were two shots fired, or a dozen?

A I heard three or four.

Q You remember that very well, three or four?

A Yes.

Q Did you see any persons coming out of the dance hall?

A I seen a lot of people come running down after I had been there a few minutes.

Q Do you know Cunningham?

A I have seen him quite often, but I don't know him to speak to.

Q You know him by sight, I suppose?

A Yes, Sir.

Q And did you see him that night?

A No, sir.

Q Didn't see him on the street at all?

A No, sir. I didn't take notice.

Q Did you go over across the e way to see what the trouble was?

A I Just stopped there and inquired off a few that came down from the hall.

Q Did you go across the street to inquire?

A We inquired off one, Yes, sir.

Q Did you go across the street to inquire?

A No, sir.

They come running over.

Q You remained in front of the saloon?

A Yes, sir.

Q All four of you remained in front of the saloon?

A Yes, sir.

Q And you remained in front of the saloon how long?

A A few minutes.

Q Until you were told that a man named Joe Larkin had been shot?

A Had been shot, yes, sir.

Q Did you know Joe Larkin at that time?

A No, sir.

Q Did you know any of the Larkins at that time?

A No, sir. I would not care to know them.

Q You didn't know them?

A No, sir, I have heard of them, though.

Q But you did care to know William Moore?

A Yes, sir.

Q He was all right, wasn't he?

A To my knowledge.

Q Did you know Henry Moore in 1908?

A I don't think I did.

Q Did you see Moore the next night?

A Yes, sir.

Q Did you talk about the shooting?

A That didn't impress us, because we didn't know that he was blamed for it.

Q Didn't the papers have an account the next night after the shooting in this dance hall, in which Larkin was shot, and Roxy Walsh and Henry Moore were charged with the shooting?

A I didn't hear of Moore being charged with the shooting, but I heard of Roxy Walsh being charged with it.

Q Did you read that in the papers at the time?

A No, sir, I heard it.

Q You read the papers every day?

A Frequently, Yes, sir.

Q Don't you read the papers every day?

A Not every day. I work sometimes.

Q You won't say that you didn't read in the newspapers that Roxy Walsh and Henry Moore were charged with the shooting?

A No, sir.

Q Were you ever a witness before to-day in this case?

A No, sir.

Q You were not a witness in the Coroner's Court, were you?

A No, sir.

Q Neither were your friends, silver or Cohen?

A No, sir.

Q Or the other man that testified here?

A Not that I know of.

Q And this is your first appearance in this case?

A Yes.

Q When did you first hear that Henry Moore had been charged with this shooting?

A The day after the day he was arrested.

Q Of course, you remember that day?

A Yes, sir.

Q You discussed that day with the representatives of the defendant last night, talked about the day when it happened?

A Not last night.

Q What?

A Not last night.

Q Or the night before?

A No, sir.

Q When was it?

A The day after he was arrested.

Q Was that the time you talked with the defendant's

lawyers?

A No, sir; I only came down here lately.

Q What do you mean by "lately"?

A About a week or so ago.

Q What day last week were you here?

A Here?

Q Yes.

A I was not here at all.

Q Where were you a week ago, did you say?

A Down in the lawyer's office.

Q And who brought you down to the lawyer's office?

A Jacob Cohen.

Q Jacob Cohen is a very intimate friend of this defendant, Moore, isn't he?

A Yes, sir; I think he is.

Q And Jacob Cohen is the one that brought you down to the lawyer's office?

A Yes, sir.

Q Did Jacob Cohen tell you what you were to tell the lawyer when you went down there?

A No, sir.

Q At the time you arrived in the lawyer's office you did not know anything about what you were going to testify to?

A I knew what I was going to testify to; I knew where Moore was that night; he was in my company when the thing happened.

Q Did Cohen tell you what charge was against Moore?

A I read what the charge was.

Q Oh, you read about that?

A When Moore was arrested.

Q You read of that?

A Yes.

Q And did the article which you read contain a full account of the shooting?

A Not a full account, no.

Q Can you give me the name of the paper which you read,

containing any account of the shooting at all?

A The World had it that Moore was arrested for the shooting of Larkin, and that is how I come to know.

Q Did you go to a funeral with Moore at the time of his arrest?

A No, sir.

Q At the time when he carried a gun with him?

A No, sir.

MR. WASSERVOGEL: That is all. If your Honor please, I would like to have the witness Corrigan recalled, for further cross examination. I told Mr. Harowitz about that this morning and he told me he would be here. Now, I have sent a subpoena for Hugh M. Corrigan, and find he is not at his home, and is not working, and I would ask that Mr. Harowitz be requested to have him here this afternoon, so I can examine him further.

MR. HAROWITZ: The first time the District Attorney intimated he wanted Corrigan was at half past ten this morning. He got through with him yesterday. I said I expected he would be here.

THE COURT: Try and get him.

MR. HAROWITZ: Certainly; we will try and get him.

LEO REDDY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A Leo Reddy.

Q Where do you live?

A 462 West 41st Street.

Q What is your business?

A Chauffeur.

Q For whom?

A Ford Motor Company.

A And where is their place of business?

A Long Island city.

Q What was your business in December, 1911?

A Bartender.

Q Where?

A On Ninth Avenue and 36th Street.

Q And who is the owner of that saloon?

A William J. McGraw.

Q And how long had you been working for him?

A Two years.

Q Do you remember the night of the shooting around there, when Joe Madden was killed?

A Yes, sir.

Q Were you working that night?

A Yes, sir.

Q Do you know Louis Altier and William Silver?

A Yes.

Q Were they there that night?

A Yes, sir.

Q Do you know the defendant, William Moore?

A Yes, sir.

Q Did you see him there that night?

A Yes, sir.

Q And do you know Jake Cohan?

A Yes, sir.

Q What time -- who came in there first?

A Silver and

Q And how long afterwards did Cohen and Moore come in?

A They were only in there, I should Judge, about half an hour, when Moore and Cohen walked in.

Q Who was serving the drinks?

A I was serving the drinks.

Q And how many drinks did you serve, do you remember?

A I served Altier and Silver first, and Moore and Cohen came walking in, and they says, "You are just in time, have a drink." They drank that drink up, and ordered another one, and as I was serving them with that second drink we heard some shots across the way. The party got up and walked out of the place.

Q All ran out?

A Walked right out of the place.

Q Did you go out?

A Yes, sir, I went as far as the door.

Q Did you learn what happened?

A Yes, sir.

Q You are sure now at the time you heard these shots, Moore was there with the other three?

A Yes, sir.

MR. HAROWITZ: Your witness.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q How long have you known Moore?

A Well, from the time I was working in the place for McGraw?

Q How long le that?

A About two years.

Q Two years before this shooting?

A Yes, sir.

Q Moore was a frequent customer of yours?

A Well, you

couldn't very well call him a frequent visitor. He was in there once or twice or three times a week.

Q Once or twice or three times a week, and how about a many named Altier, was he one of the frequenters of your saloon?

A Yes, sir.

Q And a man named Silver?

A Yes, sir.

Q And a man named Jacob Cohen?

A Yes, sir.

Q And there were a great many other people in your saloon that night, weren't there?

A Not to speak of.

Q This was Sunday night?

A Sunday night.

Q Have you got a restaurant there?

A No, sir.

Q No restaurant privilege?

A No, sir.

Q You were breaking the law, weren't you, in serving drinks to people?

A I was compelled to. I was only working for a living I was not owning the place.

Q And you heard some shooting, too, I suppose?

A Yes.

Q You don't know how many shots?

A No, sir. I couldn't recall.

Q Paid no attention to that at all?

A No, sir.

Q Hear any police whistle?

A When I went out to the door I heard a whistle, but I couldn't detect what it was.

Q Couldn't detect a police whistle?

A I don't know what it was. I heard it blowing.

Q And you are a chauffeur?

A Yes, sir.

Q Around at night frequently?

A I didn't know at the

time; I was not employed then as a chauffeur.

Q You know now, don't you?

A Yes, sir.

Q You have been a bartender for some time?

A Only two years.

Q At any rate, you went outside, didn't you?

A As far as the door.

Q Only as far as the door? Did you open the door?

A The door was open.

Q The door was open all evening?

A A family entrance door to the house,

Q And did you remain outside any length of time?

A No, sir. I did not,

Q You went right back?

A Right back to the store.

Q Did you see Moore after that night?

A I saw him, yes, sir.

Q How frequently?

A Oh, the same amount of times; maybe twice a week.

Q Did you know Larkin?

A No, sir.

Q The man that was shot?

A No, sir.

Q Did you ever know that Moore carries a gun?

A No, sir, I did not,

Q What?

A No, sir.

Q You don't ask your customers whether they carry guns or not?

A No, sir, I do not.

Q You don't carry a gun yourself?

A No, sir. I have no troubles.

Q Was Moore one of your pals?

A No, sir. I couldn't call him a pal of mine.

Q You never went out with him at any time?

A No, sir. I did not.

Q When for the first time did you hear that Moore and Roxy Walsh had been charged with the shooting of this man Larkin?

A When did I hear of it?

Q Yes, when did you hear of it?

A When did I hear of Roxy Walsh and Moore?

Q Yes, A I didn't hear of Moore being accused of it at all.

Q And when for the first time did you hear the name Roxy Walsh was connected with this case?

A Only here a short while ago.

Q How long would you say?

A Oh, I should judge about three months or two months.

Q At that time, didn't you hear that Moore was also charged with that same crime?

A Afterwards, I did.

Q What?

A After, I did.

Q Who was it that first told you about Walsh and did not tell you about Moore?

A I first heard of Moore; a friend of mine came up, Jake Cohen, and asked me.

Q Jake Cohen came to you also?

A Yes, sir.

Q Who was it first spoke to you about Walsh but did not mention Moore's name?

A Nobody spoke to me about Walsh at all.

Q Didn't you tell us a moment ago, you first heard about Walsh and then subsequently that Moore was also charged with the same crime?

A It is such a mixed up thing, I didn't really pay any attention to it, to tell you the truth.

Q I am asking you whether you didn't say that a few minutes ago?

A I heard two was in on it.

Q You did hear that the two of them were in on it. Who told you?

A Nobody.

Q Where did you hear it?

A I read it in the paper.

Q Tell me what paper you read it in?

A I think it was the World; I can't just recall.

Q You can't just recall?

A No.

Q DO you remember when you read it?

A I can't just tell you that.

Q Do you know where Moore lived in the last year?

A No.

Q Did you ever know where Moore lived?

A No, sir.

Q When you read it in the paper, did you call on Moore?

A No, sir, I did not.

Q You have never been a witness in the coroner's Court, or any other court before to-day?

A No, sir.

Q And you only came down to Court because Jacob Cohen came after you?

A Yes, sir.

MR. WASSERVOGEL: That is all.

RE--DIRECT EXAMINATION BY MR. HAROWITZ:

Q You didn't know that Moore was wanted until you read in the paper that he was arrested.

A Yes, sir.

Q And you never heard that Moore was on trial before the coroner's Court, did you?

A No, sir.

Q You were never asked about it?

A NO, sir.

Q You know now that Moore never was tried before the coroner?

A Yes, sir.

Q Have you ever been a witness before in your life in any case?

A No, sir.

MR. HAROWITZ: That is all.

JOSEPH COHEN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your name?

A Joseph Cohen.

Q Where do you live?

A 165 Penn Street, Brooklyn .

Q Mr. Cohen, what is your business?

A Live poultry contractor.

Q How long have you been in that business?

A 22 years.

Q In this city?

A Yes, sir.

Q And have you also a place in Hoboken?

A Yes, sir.

Q Do you know the defendant, Henry Moore?

A Yes, sir.

Q Has he been working for you?

A For near two years.

Q Where?

A Well, on the railroads, New York and Brooklyn, wherever we have poultry, we have poultry coming on the B. & O. 26th Street; we have it coming on the New York Central, 31st Street New York side; on the Jersey side, we have it

come on the Delaware, Lackawanna and Western, and the Pennsylvania, all those railroads, wherever we have poultry coming.

MR. HAROWITZ: That is all.

MR. WASSERVOGEL: No questions.

BY MR. HAROWITZ:

Q Oh, let me ask you was there a strike in your business in the month of July or August, do you remember?

A Well, there was on poultry, Yes, sir.

Q What month, do you remember?

A I can't just tell you. That was on account of the feeding business.

A In the summer time?

A Yes, sir.

Q Was it before this defendant was arrested, or after? A Oh, way after; I don't really remember, to tell you the truth; I don't remember.

Q And you say during the last two years he has worked in Hoboken as well as in New York?

A Yes, sir.

Q And when he worked in New York he worked on the West Side, around 26th Street? A Yes, sir, 26th Street and 12th Avenue, that is the B.& O. Railroad.

Q All around that neighborhood?

A Yes, sir. and on 31st Street.

MR. HAROWITZ: That is all.

THOMAS J. McCABE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your full name?

A Thomas J. McCabe.

Q Where do you live?

A 545 West 37th Street.

Q What is your business?

A Horseshoer.

Q In business for yourself?

A Yes, sir.

Q Where?

A 525 West 37th Street.

Q How long have you been in that business?

A My father was in it for the last forty years, and he is dead about 12 years, and I have followed it up ever since.

Q Do you know the defendant, Henry Moore?

A Yes, sir.

Q Have you met him in the city of New York in the last two years?

A Yes, sir.

Q Where?

A Well, I met him in the elevated station, and I met him at 37th Street and Tenth Avenue, Ninth Avenue and 37th Street.

Q Is there any police station near 37th Street and Tenth Avenue?

A Yes, sir.

Q Where?

A Between Ninth and Tenth Avenue, about four thirty six, I should judge.

Q How far from the police station did you see him?

A I guess about 300 feet, as far as I can judge, from the corner to the station.

MR. HAROWITZ: Your witness.

MR. WASSERVOGEL: No questions.

EDWARD PATRICK MULLEN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HAROWITZ:

Q What is your full name?

A Edward Patrick Mullen.

Q Where do you live?

A 504 Tenth Avenue.

Q What is your business?

A Poultry handler.

Q And you work for whom?

A Joseph Cohen.

Q The last witness on the stand?

A Yes, sir.

Q How long have you been working for him?

A For the past year.

Q Where?

A Down in Washington Market.

Q In this city?

A In this city.

Q DO you also work in Hoboken?

A Yes, sir.

Q Do you know the defendant, Moore?

A I do.

Q Have you worked together with him in the last year?

A I did.

Q Where?

A I worked with him in Hoboken; I worked also in New York, on the B. & O.

Q For Cohen ?

A For Cohen.

MR. HAROWITZ: Your witness.

MR. WASSERVOGEL: No questions.

MR. HAROWITZ: The defendant rests.

MR. WASSERVOGEL: Have you got Corrigan here?

MR. HAROWITZ: I don't know.

MR. WASSERVOGEL: Have you sent for him?

MR. HAROWITZ: Yes, sir.

MR. WASSERVOGEL: DO you say you rest?

MR. HAROWITZ: I do.

REBUTTAL TESTIMONY.

PATRICK J. CUNNINGHAM, being recalled, testified as follows:

BY MR. WASSERVOGEL:

Q Mr. Cunningham, do you know Mrs. Larkin, the mother of the man who was shot?

A Well, I met her some time after the shooting.

Q She called at your place of business after the shooting, and she was accompanied by her daughter, wasn't she?

A She was accompanied by a young girl.

Q About the 15th of December, wasn't it?

A I don't remember that date.

Q Shortly after?

A Shortly after, Yes, sir.

Q And you had a talk with her on that occasion, didn't you?

A Yes, sir.

Q Do you remember that you said to her -- withdrawn.

Do you remember she asked you whether you know anything about the shooting, and you said "Yes"?

Do you remember that?

A I don't remember the conversation, sir. no.

Q Will you say that this is the conversation that took place at that time, or the substance of the conversation: That you were present at the top of the stairway at the time of the shooting, that you had just spoken to her boy, Eddie, the one that was a witness in this case; that Eddie had been taking tickets when the shooting took place? DO you remember that part?

A No, sir.

Q You don't remember that?

A No, sir.

Q Will you say that that was not the subject of the conversation?

A I don't think it was, sir. no, because I was not talking to him.

Q Will you say that this was not the subject of the conversation: That, Mrs. Larkin then said that she understood that Roxy Walsh and Henry Moore, did the shooting and that you said that that was right? Do you remember that?

A I said Walsh, Yes, sir.

Q Didn't you say, in answer to her question, that both of those men, Roxy Walsh and Henry Moore, had done the shooting?

A No, sir.

Q And didn't you also say that, although you had never met Moore before, you would be able to identify him, and that you knew he was Moore? DO you remember that?

A Yes, sir.

Q And did you say that about Moore?

A Say what?

Q What I just asked you?

A I did not tell her that Moore was there at all, because I didn't know Moore.

MR. WASSERVOGEL: you didn't say that. That is all.

BY MR. HAROWTTZ:

Q You didn't know Moore, and you didn't tell her that?

A No, sir.

Q But after that conversation, nine days after that, you were called by the District Attorney's office as a witness for the people in this case, weren't you?

A Yes, sir.

MR. WASSERVOGEL: Not as a witness for the people, but to tell what he knew.

Q You were subsequently called by the District Attorney's office before the Grand Jury?

A Yes, sir.

Q And gave testimony the same as you gave before this Jury?

A Yes.

Q The same testimony you gave before the coroner's Court is the same testimony you gave before this jury?

A Yes, sir.

Q And the same testimony you gave before the Grand Jury?

A Yes, sir.

MR. HAROWITZ: That is all.

PHOEBE LARKIN, called as a witness, on behalf of the People, in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your full name?

A Phoebe Larkin.

Q Where do you live?

A 306 West 127th Street.

Q Mrs. Larkin, you are the mother of Joseph Larkin?

A Joseph Madden.

Q. Joseph Madden, the young man that was shot on December 10th, 1911, and who died the next day; is that right?

A Yes, sir.

Q And do you know Mr. Cunningham, the last witness?

A I know Mr. Cunningham from going up there the day after my boy was buried.

Q That was about the 15th of December?

A December 15th, yes, sir.

Q Now, Mrs. Larkin, did you talk with Mr. Cunningham that day?

"Yes", or "no"?

A Yes, sir.

Q Will you please tell his Honor and these twelve gentlemen what you said to Cunningham and what he said to you?

MR. HAROWITZ: Just one moment. I object to the question, if your Honor please, on the ground, first, that the witness Cunningham when called on the stand was the district attorney's own witness. He was asked as to a collateral matter, and he is bound by his answer

MR. WASSERVOGEL: The witness was called back for further cross-examination, your Honor, as your Honor knows.

THE COURT: Is this a collateral matter?

MR. WASSERVOGEL: It is not collateral at all. It is right to the issue.

MR. HAROWITZ: He is trying to impeach his own witness.

THE COURT: No, he is trying to contradict his own witness, which is very different.

MR. HAROWITZ: I respectfully except.

Q Now, tell us what you said to Cunningham, and what he said to you?

A I went over to Mr. Cunningham in regard to my boy's overcoat, and I asked Mr. Cunningham if he saw the shooting. He said he was on the head of the landing where the shooting occurred, talking to my boy Edward at the time, and I said, "Then, you know all about it?" He said, "I do." I said, "I understand it is a man by the name of Henry Moore and Rooky Walsh that done the shooting." He said "You are right, Mrs. Cunningham." I said "You would be able to identifying him?", and he said, "Yes" That was all he said to me and all the conversation I held.

Q Did he tell you which of your boys he had been talking to shortly before the shooting?

A He told me he was talking to Edward.

Q Edward, the one that was a witness in this case?

A Yes.

MR. WASSERVOGEL: Cross-examine.

MR. HAROW ITZ: No questions,

MR. WASSERVOGEL: That is all,

EDWARD LARKIN, being recalled on behalf of the People, in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Larkin, the witness Corrigan testified that he had seen you in the hall, the dance hall, before the shooting; that he ran out after the shooting, and that you were right behind him. Is that the fact?

A No, sir.

Q He also said that you were standing at the head of the stairs and that you pulled a gun out of your pocket, and, while standing at the head of the stairway, that you said, "There goes the something or other; they shot Joe," Did you say that to Corrigan?

A No, sir.

Q Did you have a gun?

A No, sir.

Q Look at these twelve men and tell them whether you had a gun at that time?

A No, sir.

Q You are still employed by this stock brokerage firm of Wardwell & Adams, at 111 Broadway?

A Yes, sir.

Q And you have been there for the past four years?

A Yes, sir.

Q Have you ever been in any trouble of any kind?

A No.

Q Now, the witness Sonner testified that he had been talking with you in the hall before the shooting, and that you ran out after him. Do you recall that?

A No, sir.

Q were either of those two men in the hall at any time

that evening?

A I remember seeing Corrigan; I don't remember seeing Sonner.

Q After the shots were fired, you did go back into the hall for some purpose, did you?

A Yes, sir.

Q What did you go back for?

A A glass of water.

Q What did you want the water for?

A To give to my dying brother.

Q And then with the water you came back?

A Yes, sir.

Q I believe you told us on your direct examination that you had seen Moore and Walsh coming in and out of the hall at different times that evening?

A Yes, sir.

MR. WASSERVOGEL: That is all.

CROSS-EXAMINATION BY MR. HAROWITZ:

Q You never said anything about that glass of water before, did you?

A Yes, sir.

Q When?

A Yesterday.

Q But you didn't say it before the Coroners' jury, did you?

A No, sir.

Q Not before the Coroners' jury, did you?

A No, sir.

Q Your memory has been refreshed yesterday?

A The question was not brought up.

Q What do you do in this stock exchange house?

A Run a board.

Q What?

A Run a board.

Q What?

A I run the stock board.

Q What do you mean by that?

A Putting up the quota-

tions.

Q With chalk?

A No, the fractions.

Q Did the people whom you worked for in the stock exchange place for the last three years know you were in the habit of running balls for people who were jail?

A No, sir.

Q You didn't tell them that?

A No, sir.

Q None of them knew that?

A No, sir.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q You were not in the habit of running balls for people who were in jail, were you?

A No, sir.

Q Your brother was in trouble at the time, and some of his friends were giving this ball for his benefit; isn't that the fact?

A Yes, sir.

Q Isn't that the fact?

MR. HAROWITZ: Objected to.

THE COURT: There is nothing pending.

Q Isn't that the fact?

A Yes, sir. run by the slub.

AGNES VERONICA LARKIN, called as a witness on behalf of the People, in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your full name?

A Agnes Veronica Larkin.

Q Where do you live?

A 306 West 127th Street.

Q Miss Larkin, you are a sister of the deceased?

A Yes, air, I am.

Q Joseph Larkin, are you?

A Yes, sir.

Q And a daughter of the last witness, Mrs. Larkin?

A Yes.

Q Now, your brother died, I believe, on December 11th, 1911; is that correct?

A Yes, sir.

Q Do you know a man named Cunningham?

A Yes, sir.

Q Did you have occasion to go to Cunningham's place any time after your "brother's death?"

A Yes, sir.

Q How long after his death?

A The day after the funeral, December 15th.

Q And did you have a talk with him?

A Yes, sir. my mother did.

Q And you were with your mother at the time?

A Yes, sir.

Q What was your object in going to Cunningham's place at that time?

A We went in reference to my brother's overcoat.

Q You wanted to get his overcoat?

A Yes, sir.

Q Please tell us what was said by your, mother, and what was said by Cunningham, on that occasion?

MR. HAROWITZ: I object to the question, on the ground it is incompetent, if your Honor pleases.

THE COURT: I have received one witness' testimony. Now, this is to corroborate the other witness.

MR. HAROWITZ: Simply to preserve the record.

THE COURT: And the foundation, concededly, was laid, was it not?

MR. HAROWITZ: I claim it was not.

THE COURT: Is there any dispute about that?

MR. WASSERVOGEL: That is why Cunningham was recalled to the stand.

THE COURT: Answer the question.

MR. HAROWITZ: I take an exception.

A My mother and I went to Mr. Cunningham's place in reference to my brother's overcoat. My mother asked Mr. Cunningham if he was on the landing when my brother was shot, which he said he was; he was talking to my brother, Edward, when they were coming up the stairs, and he was holding my brother Joe's hand when my brother was shot; and my mother said to him that she had heard that Rocky Walsh and a fellow named Henny Moore were accused of it, and he said, "Yes, you are right; "those are the words he said.

Q What else did he say about knowing these people?

A He said he knew Rocky Walsh personally, and he would know Henny Moore.

Q Now, do you know a young man named Corrigan? who was a witness here?

A Yes, sir.

Q Did you ever talk to Corrigan about your brother's death?

A Yes, sir.

Q About how long ago?

MR. HAROWITZ: I object to that, if your Honor please

THE COURT: Answer.

MR. HAROWITZ: Corrigan has not been interrogated about this.

THE COURT: This is "yes", or "no", as to the date.

It is only a preliminary inquiry, and if not connected we will have to strike it out.

Q Did you have a talk with Corrigan about your brother's death?

A Yes, sir.

Q And where was this and when, about when?

A I couldn't exactly say, but it is over eight months ago.

Q Was it before the arrest of Henry Moore?

A Yes, sir.

Q Will you tell us what was said?

MR. HAROWITZ: I object to that.

MR. WASSERVOGEL: Now, it is true, your Honor, that Corrigan's attention has not been called to this matter, because it is really new matter that was called to my attention this morning. I asked Mr. Harowitz to produce Corrigan; he has not brought him here yet. If he insists upon the propriety, we will have to withdraw this for the present, and adjourn until Corrigan comes here.

MR. HAROWITZ: If Corrigan takes the stand and denies he had that talk with her, her testimony becomes incompetent, this being a collateral matter.

THE COURT. Of course, the district attorney concedes there is no foundation for it at this time.

MR. WASSERVOGEL: There is no foundation for it at this time, because Corrigan's attention was not called to it.

THE COURT: If you consent, we will have it, and if

you don't, we can't.

MR. HAROWITZ: How can I consent?

THE COURT; Very well. He talked with you about the shooting?

A Yes, sir.

MR. WASSERVOGEL: That is all.

CROSS-EXAMINATION BY MR. HAROWITZ:

Q You say Mr. Cunningham told you he knew Walsh personally?

A Yes, sir.

Q He didn't say he knew Moore personally?

A No, he didn't say anything in reference to that at all.

Q Were you present in the Coroners' Court?

A No, sir

Q You heard that Cunningham testified in the Coroners' Court?

A Yes, sir.

Q And you also heard he swore before the jury and the Coroner that he did not know Walsh?

A No, sir. I didn't hear nothing about that.

Q You didn't hear anything about that?

A No, sir.

MR. HAROWITZ: That is all.

EDWARD LARKIN, being recalled, testified as follows:

BY MR. HAROWITZ:

Q The last question the district attorney put to you when you were on the stand was, that you simply ran this affair for one of your brothers who happened to be in a little trouble?

A Ran by the club.

Q Who happened to be in a little trouble?

A Yes, sir.

Q He was charged with highway robbery?

MR. WASSERVOGEL: You had that yesterday. It is conceded that he was.

Q And he is now is Singh Sing?

MR. WASSERVOGEL: Yes, you had that yesterday. I gave it to you. That is conceded.

MR. HAROWITZ: Do you rest?

MR. WASSERVOGEL: Unless you will get Corrigan here we rest.

MR. HAROWITZ: If your Honor will take a recess now, we will try to get Corrigan here.

THE COURT: There is no criticism of you, Mr. Harowitz.

MR. HAROWITZ: In view of the importance of this case, I should prefer to have an adjournment now, in order so I may prepare my notes on the summing up.

THE COURT: I suppose I have got to grant this re-question.

MR. WASSERVOGEL: There is no objection. I would suggest that Mr. Harowitz try to have the witness here, then, if he wants an adjournment.

THE COURT: Gentlemen, you see how difficult it is for the Court to adhere to its schedule and to hold court at regular hours. This request is a reasonable request, and I think I am bound to grant it, and yet it

means we take an hour and a half recess instead of one hour. I see no escape for it, and, therefore, I grant the motion. Do not talk about this case, nor permit anyone to talk to you about it, nor form nor express any opinion thereon, until the case shall finally be submitted to you. Come here at two o'clock, gentlemen.

(The Court then took a recess until 2 P.M.)

AFTER RECESS

MR. HAROWITZ: If your Honor please, I ask your Honor to take from the consideration of this jury the count charging murder in the first degree.

THE COURT: What do you want to submit, Mr. District-Attorney?

MR. WASSERVOGEL: All the counts in the indictment, your Honor.

THE COURT: I deny your motion.

MR. HAROWITZ: Exception. I ask your Honor to dismiss the indictment, and direct the jury to acquit the defendant, on the ground the People have failed to prove the crime charged against him, or any other crime charged in the indictment.

THE COURT: The motion is denied.

MR. HAROWITZ: I take an exception.

THE COURT: Is that witness here?

MR. WASSERVOGEL: Mr. Harowitz tells me he is not here, so I suppose we had better sum up.

THE COURT: How long will you want?

MR. HAROWITZ: I cannot say, but I will be as brief as I can.

THE COURT: If you take less than an hour, we can give the case to the jury this afternoon.

MR. HAROWITZ: I will do the best I can.

MR. WASSERVOGEL: I think half an hour is sufficient.

THE COURT: If you will sum up in half an hour, we can give the case to the jury this afternoon.

MR. HAROWITZ: I don't think I can do that.

THE COURT: Well, proceed.

MR. HAROWITZ: I renew the motion, if your Honor please, to strike from the testimony in this case the evidence of Lieutenant Jones and Officer Flynn, on the ground that they are not competent relevant or material, and that the district attorney has not properly connected them.

THE COURT: What is that testimony?

MR. HAROWITZ: The testimony as to the finding of the pistol upon the defendant at the time of his arrest, a year and a half after the crime is alleged to have been committed.

THE COURT: I won't strike that out now. It is in.

I will not strike it out. If there is any unconnected testimony I will entertain and consider your motion.

MR. HAROWITZ: I respectfully except.

Mr. Harowitz then summed up the case to the jury on behalf of the defendant, as follows:

May it please the Court, Mr. Foreman, and Gentlemen of the Jury:

We now approach the closing chapter of this case, and at the outset, gentlemen, on behalf of this defendant, I want to thank you for the attention that you have given this entire case and for the interest you have displayed as the evidence was coming in.

This defendant is charged here with the most serious crime known to our law, the crime of Murder in the First Degree; and I want to say to you, gentlemen, that anything that has been left undone by counsel for the defendant, or something that you may be of the opinion should have been done that was left undone, I ask you at the outset, when you go into the jury-room to consider the guilt or innocence of this defendant, gentlemen, not to visit it upon him.

It is a difficult task, in a case of this kind, to at all times comply with the ideas of twelve men, who have different views regarding different circumstances. Some of you gentlemen may feel that his kind of evidence

ought to be presented, some of you may think this ought to be done. I am responsible, gentlemen, for the presentation of the defense in this case. I have done what I believed and what I now believe to be my full duty by this defendant. I have presented to you, gentlemen, every bit of evidence that I could scrape together which will tend to throw a light upon the guilt or innocence of this man. I have presented to you the entire defense as prepared at the outset, gentlemen. That, I believe, is all the duty that is devolved upon me.

His Honor here has the duty of presiding at the trial, to see that order and decorum is kept, to rule upon questions of law, questions of the admission and the exclusion of testimony, to see that trial is properly conducted, to see that the defendant gets an impartial and fair trial, and in the end to charge you, gentlemen, upon the law as applicable to the facts as you shall find them in the jury-room, and then his duty ceases.

My friend on the other side has the duty of presenting to you the evidence as he claims, as is claimed by the People, touching the guilt or innocence of this defendant. This he has done ably, gentlemen, and he has gone, I think, as far as he should have gone in this case. His duty ceases there.

I have given to the defendant, as I have said,

the best, gentlemen, that there is in, as far as my legal ability is concerned. My duty ceases there.

Then, after all, after the last words shall have been spoken by my opponent, after the Judge shall have charged you upon the law as applicable to the facts in the case, then it becomes your duty, gentlemen, to go into your jury-room and to decide the guilt or innocence of this twenty-two year old boy, whether he committed the atrocious crime of murder on December 10th, 1911.

So you see, gentlemen, that, after all, the gravest responsibility for the solution of the case rests with you.

You have in your hands and in your keeping this afternoon the life and the liberty of a human soul, and if a mistake is made and a innocent boy sent to the electric chair, that mistake, gentlemen, and that responsibility, is yours, and yours, and yours, and yours, and yours, alone.

And, therefore, gentlemen, at the outset, before I begin to discuss the facts in this case, when you go to your jury-room I want you to consider the gravity of the situation as far as you are concerned.

I don't want you to be swayed by prejudice one way or the other. I don't want you to be swayed by sentiment in this case. I am not going to appeal to you for the life of this boy upon sentiment. I am going to appeal to you upon the cold proposition of the facts in this case.

I am not going to ask you for sympathy at all. I am going to ask you for justice for a young boy twenty-two years of age charged with the crime of murder. Not for any sympathy.

And so I want you, on the other hand, to keep away from any Prejudice that you may have received from the consideration of the evidence in this case that acts counter to that.

You have sworn under your oaths to try this case according to the evidence, and the evidence alone. You have sworn, gentlemen, under a simple oath, to try this case according to his Honor's charge, that you will receive the law from the Court and you will be guided by that.

Oh, some of you may say, well, this is bad law; I don't agree with it; I don't think the law ought to be that way. You have no right to question that, when his Honor shall tell, as he will, that a defendant in a criminal case is presumed to be innocent throughout the entire trial, until you are convinced from the evidence in the case, and, mark you, from the evidence in the case, and that alone, that he is guilty beyond a reasonable doubt, you cannot convict him.

And that presumption of innocence, gentlemen, goes with the defendant throughout the entire case. The burden never shifts. He is presumed to be innocent

until the contrary appears to your satisfaction from the evidence beyond a reasonable doubt. That is the law of the State. That is the law that you have taken your oaths to obey in the jury-box. That is the law his Honor will lay down. You gentlemen, when you go into the jury-room, also will take into consideration the charge -- all the charges in the case, and I know you will. That the defendant in this case cannot be convicted on any count in the indictment, whether murder in the first degree, murder in the second degree, or manslaughter, if you entertain a reasonable doubt as to any of those counts. If you entertain a reasonable doubt as to whether he has committed the crime of murder in the first degree, you must acquit him of that count.

If you entertain a reasonable doubt as to whether he has committed murder in the second degree, you must acquit him on that count.

If you entertain a reasonable doubt as to whether he has committed manslaughter in the first degree, you must acquit him of that count.

The Court will also charge you that a defendant in a criminal case, and this defendant in this case, is at no time, at any stage of the case, called upon to prove his innocence. That is the law of our land, the law of our State, the constitutional law. That is the law

that you have sworn upon your oaths to take and follow from the Court, and that is the law as the Court will lay it down to you. A defendant in a criminal case is not obliged to disprove his guilt. A defendant in a criminal case can sit there silent at all stages of the case, without offering one scrap of evidence to rebut the case of the prosecution. The law says that the People must prove the guilt of a defendant in a criminal case beyond any reasonable doubt. Not that the defendant must prove his innocence. The People must establish the guilt to your satisfaction on any count in the indictment beyond all reasonable doubt, and the defendant at no time is called upon to prove his innocence.

Now, what have we got in this case, defendant? The District-Attorney starts out with the proposition, first, that Joe Madden, the deceased, was killed on December 10th, 1911, and produces in evidence People's Exhibits 2 and 3, two bullets which were found in the body of the deceased. They are not different -- according to the People's testimony, they are of the same caliber, but of a different make; and he started out, if you remember, with the proposition, that one bullet was fired by one pistol and the other bullet by another.

If you remember, gentlemen, the only testimony in this case that tends to connect this defendant with the commission of that crime at all is the testimony of Eddie

Larkin, whose testimony I will take up on a moment, and Eddie Larkin says that the defendant fired but one shot. That is very important in this case.

I hope you g fired but one shot. That is very important in this case.

I hope you gentlemen, when you get to your jury-room, will not forget that one fact that stands out so strongly in this case, in view of what I will have to my in a moment.

The only other witness that is called by the People, Shore, who does not identify this defendant, but who says somebody was there besides Walsh, and fired by one shot. Walsh fired four shots, according to the testimony of Larkin and the other man.

Now, the District-Attorney starts out with the proposition that one of these shots must have been fired by Walsh and the other by the defendant, Moore, and then, all of a sudden, after he had rested his case, comes back in the afternoon, and, lo and behold, we see upon the witness stand here an expert, an expert of the Police Department, Lieutenant Jones, who wants to tell you gentlemen that he can tell by looking at a bullet after it was shot, what kind of a pistol it came from. Well, he may be able to do that. But Lieutenant Jones says that there was something, if you remember, something the matter with the pistol that was found upon the defendant, and I will have something to say about that later on, gentlemen; that there is a certain movement of this barrel,

it is not straight, or it is not tight, or something, that when a bullet is shot out of it it leaves an imprint, or it leaves a little mark here upon the lead.

I asked him if there were not thousands of pistols like that, and he said yes, and I asked him if there were not millions of pistols like that, and he said yes, he has seen many.

"You can't swear that these two bullets found in the body of the deceased came from this pistol?" "Oh, no, a similar pistol.". But he does want to swear that these two bullets that were found in the body of Joe Madden, the deceased, came from the same pistol -- gentlemen, you will remember that -- came from the same pistol.

Now, if that is so, if that be so, gentlemen, then you must acquit this defendant. There is not a living soul that came here and swore that the defendant fired more than one shot. There is not anybody, except Ed Larkin, who swears that he fired one shot.

Now, if the People's theory now, as he has changed it around yesterday afternoon is correct, that these two bullets came from one gun, why, gentlemen, then his case collapses right there, and you must acquit the defendant.

Now, when you go to your jury-room, I want you to take exhibits 2 and 3 and examine them with relation

to exhibit 5, which he says he practiced on in Headquarters yesterday, and I want you to note, gentlemen, the difference between the markings upon -- this is the bullet that was found in the body of the deceased. Do you seem that big, hollow mark there? This is the bullet that he practiced with yesterday. Do you gentlemen see the difference? You don't see any hollow mark like that. These are the two he fired out of the pistol yesterday which was found on the defendant a year and a half after the crime is alleged to have been committed.

Gentlemen of the jury, are you going to take the life of a twenty-two year old lad on expert testimony?

Haven't we had an exhibition of expert testimony in this country only recently, when twelve or fifteen of the greatest insanity experts in the County took the stand in the Robin case and all declared Robin to be insane, and the jury very properly rejected their theory and declared him sane, and you know, gentlemen, Robin is as sane a man as there is in this world. Expert testimony: Convict a human soul upon expert testimony: Why, gentlemen, you wouldn't hand a dog upon that testimony, not only a human soul.

Do you believe that it is possible for a human being to take the stand and swear that two bullets shot a year and a half or two years ago come from the same pistol, or a similar, even? Do you think he can now

swear that these two bullets are the same as these?

There is no proof, gentlemen, in this case that this pistol at the present time, when Lieutenant Jones examined it, was in the same condition as when it was found in the pocket of the defendant.

I will tell you why this pistol was brought in this case. It is an effort on the part of the District-Attorney, my friend here on the other side, whom I have known for years, who is my esteemed friend, who saw the weakness of his own case, who saw that his case must collapse, wanted to get before the jury, oh, the defendant had a pistol upon him when he was arrested. Oh, he must be a desperate man. He must be a bad man. Oh, I got to get that pistol before the jury. I want the jury to see it. They will go into their jury-room, and they will say "Well, we don't care about the evidence in this case; this man had a pistol upon him, and we are going to convict him on that alone."

Oh, gentlemen, that is what this was produced for, and you will bear me out when you remember yesterday morning Mr. Wasservogel put Officer Flynn upon the stand, and he said to him, "What did you say to the defendant when you arrested him a year and nine months after the murder of Larkin, at a cemetery, when one of his friends was being buried. Oh, I asked him, did he have any gun on him, and he said yes, and he produced this pistol and offers

it in evidence.

At that time, when he offered that pistol in evidence, and then you will remember the Judge struck it out, on my motion, he thought it should not have gone in, and it should not have gone in, but at that time he did not have this expert yet. At that time these two bullets were not shot at Headquarters yet. Oh, says Mr. Wasservogel, my God, I got to get that pistol in before the jury, or I will have nothing to talk about. Oh, I have got to make the jury think Henry Moore is a desperate man with a gun, oh, I have got to get that in.

And what does he do? He gets Lieutenant Jones from Headquarters, and there is this great expert who can tell that these two same bullets came from the same gun. And then he says he has made an experiment, and that these leave a similar mark, and then he gets the pistol in.

I don't care, gentlemen, what you think about this defendant having a pistol in his pocket at the time he was arrested. When you consider your oaths that you have taken, and as the Court will charge you, you have no right to consider that in connection with this case, unless you believe that the People have established beyond a reasonable doubt that this was the pistol that Henry Moore used at the time he shot Joe Madden, if he was there and did the shooting. That is the only connection

you have a right to consider his pistol at all.

If you come to the conclusion, gentlemen, that that pistol was not the pistol that did the shooting, if you come to the conclusion that Henry Moore did not have that pistol there on that night, and that that is not the pistol that shot these two shots, you must dismiss that from your mind altogether.

He is not on trial here for having a pistol in his pocket. If you acquit him in this case he will then have to answer for that. That is a seven year offense. He is not charged here in this indictment with having a pistol in his possession. You have no right to consider that fact, gentlemen, and I wish I could only be strong and powerful enough and eloquent enough to impress that upon your minds and upon your souls, when you go into your jury-room, that you, that you will not be swayed by passion or prejudice. Oh, I wish I had the power of a Daniel Webster now, that I could imprint in your hearts and in your souls the importance of this little pistol.

Oh, my friend will say, he had that pistol on him. Oh, he must be a desperate man.

Gentlemen, if you find, or if you have a reasonable doubt as to whether this was the pistol that was used in killing Joe Madden, for God's sake, under your oaths and under the Charge that the Court will give you, dismiss that from your minds.

He is not here, as I have said before, and I can't say it too forcibly nor too strongly, he is not on trial here for this gun. He will have to answer before another jury and before another court for that. If he can't explain why he carried it, or if he violated the law, he will pay the penalty for it. He is not under indictment here now for that; he is not on trial here now for that, and oh, gentlemen, when you go into your room, remember what I have said to you about that.

Now, let us take the testimony as presented by the People. First, we have the first witness, Dr. Schultze, Coroners' physician. Now, see if he don't carry out the theory of the defense. He says that he found two bullet wounds about here (illustrating). Well, Larkin said that Walsh shot the deceased twice in the stomach. Well, now, of course, he did not measure whether it was below the breast, or whether it was in his stomach, or not, but, anyway, the shots were there. Dr. Schultze says both shots had a downward course.

Now, gentlemen, I don't know whether you paid any attention to that part of the testimony, or whether you thought it was important, as it appeared to me. A downward course, almost within two or three inches of each other. Doesn't that indicate to you as it indicates to me, that the bullets were fired by one and the same hand?

A downward course, both in the same direction, both in the same place. Doesn't the further testimony of Lieutenant Jones, that these two bullets came from the same gun -- of course, he does not say it came from this gun, bear that in mind, he says there are thousands and millions of guns like that, but, at any rate, he get in this part, that the two came from the same gun; so, let there be no mistake about that.

So, Dr. Schultze says they both had a downward course. Now, doesn't that tally with Eddie Larkin, who says Walsh fired the two shots into his stomach? Larkin says Walsh fired four shots. He says there were five fired altogether. Walsh fired four shots, and the defendant, Moore, fired one in his stomach, he said. Where are the four shots? Where are the five shots? Now, we have accounted for two. Two were in the stomach. We have accounted for one which was shot in the hand, and we have accounted for another shot which he says Walsh fired as he ran downstairs, wild. That is the four shots.

Where is the shot that the defendant, Moore, fired, if he fired at all?

Walsh says, and I am taking the People's main witness in this case, and the only witness, that Walsh fired two shots first into his stomach. Then he says Walsh fired another shot which struck his brother in

the hand, and, as Dr. Schultze explained, one of the fingers was off, and then he says Walsh fired another shot as he ran downstairs.

Where is the shot that was supposed to be fired by Moore? The only two bullets that were found in the body of the deceased, in the stomach, as testified to by Larkin, he says two was fired, and the only two that the expert here says was fired from the same gun is found in the defendant's stomach.

Where is the shot that Moore fired, if he fired at all? I ask you gentlemen to consider that.

Now, we will take up the testimony of Eddie Larkin, the polished gentleman who works for a firm of Broadway brokers, or stock exchange brokers, gentlemen. He tells you that he is a brother of the deceased, or half-brother. He tells you that he came there at half past seven and opened up the hall. He opened up the hall. That subsequently, I read from page 12 of the minutes in this case, "And what time did you arrive there? A I should say about half past seven. Q And who else was there? Many people that you knew? A Well, not at the time I was there. I went to open the hall." He was called on re-direct examination this morning, and he said he had nothing to do with the affair, that it was his friends that had the affair. Here he said he went to open the hall. He gives you a descript-

ion of the shooting.

Now, gentlemen, I asked him, on cross-examination, "Are you related to Shore?" "A. No."

Shore takes the stand, the second witness for the People. You remember I asked Shore is he related to the first witness. Yes, he is his brother-in-law, one of the Larkins is married to his sister. Why does Eddie Larkin lie about that? What motive did he have to lie?

Oh, has he got a motive, or has he got a grudge against the defendant, Henry Moore, so strong that he is going to swear away his life to the electric chair?

If he had not, why would he lie? And the Court will charge you, gentlemen of the jury, when you consider the testimony of a witness and you find that he has willfully lied about any part of his testimony material to the case, you have a right to disregard that witness's entire testimony. That is the law.

He was a member -- first he said the affair was run by the Winnoa Social Club. He wanted to convey the impression to you gentlemen that it was to be a social function of a club. He did not say anything about his brother being in the Toombs on a charge of highway robbery, and afterwards went to Sing Sing.

He did not tell the Coroners' jury that he was running a benefit ball, going through the West Side, hold-

ing up people and compelling them to buy tickets for the benefit of his brother charged with robbery. He didn't tell you he went there holding up business men and other men, to compel them to buy tickets. Oh, no, this was a Winnoa Social Club affair, and when pressed on cross-examination he admitted it. Why did he lie about that?

"Are you a member of the Hudson Street Duster Gang?", I said to him.

"I don't know".

"Isn't the Winnoa Social Club really the Hudson Duster Gang, this notorious West Side gang fighters?"

"I don't know".

Has he District-Attorney produced one member of the Winnoa Social Club, an officer of the club, to show you that it was composed of decent, reputable men? Oh, no. Oh, no. That is the character of Larkin, this man who works in the Broad Exchange, and you have heard the testimony of several witnesses, and they told you they consider the Larkins desperate men. They had to buy tickets and they did buy them, and the testimony in this amply justifies that assertion. Oh, he did not tell his employers that, down-town, they don't know that Eddie Larkin was engaged in running a benefit ball and holding people up and compelling they to buy tickets for his brother who was charged

with robbery. Oh, they don't know that. Of course not. If they did, he would not be employed there now, and he would not come here and tell you he was working there for four years, and convey the impression to you that he is a respectable gentleman.

Now, gentlemen, when you come to consider the guilt or the innocence of this defendant in this case, I want you to remember that if you are going to convict this defendant on any count in the indictment at all, you will convict him upon the uncorroborated, isolated testimony of Eddie Larkin, the self-confessed perjurer and liar, as against fifteen reputable men that the defendant has produced here upon the stand and have stood the strong cross-examination of my opponent.

Are you willing to take away the life or the liberty of a human soul upon the uncorroborated testimony of Eddie Larkin, who sits there, as against the testimony of fifteen reputable citizens of this city?

Oh, my friend will say, the gun, the gun. I say to you gentlemen, I would not care if Henry Moore was the worst, most damnable creature in the world, I would not care if he was worse, than the Mountaineers of Virginia, who shot a Judge and jury in cold blood, I wouldn't care if he was worse than the bandits of Paris, who murdered innocent people in cold blood, I wouldn't care if he was the worst wretch on God's earth, I say to you, with all

the seriousness of my soul, that from the evidence in this case, under your oaths, that you have taken, you cannot, and, by God, you will not, convict this defendant.

All my friend will say will be, "the gun, the gun" and there may have been a dozen reasons why this man carried a gun, with the reputation of the Larkins, this man working in a market on the West Side, in Hoboken, and on this West Side, knowing that the Larkins were after him, those desperate Larkins, one of them in Sing Sing for robbery, one of them the desperate character that you see here -- oh, is it any wonder that this defendant had a gun?

What would you have done under the circumstances, if the Larkins were trying to put this murder up to you, and you knew the character the desperate character of the Larkins, wouldn't you be justified in fortifying yourselves.

I asked the officer upon the stand, "Didn't Larkin tell you that that is the reason he had the gun?", and he said, "no".

Well, I don't want to say much about police testimony, gentlemen. You know as much about that as I do. But I say, gentlemen, that that is the only evidence in this case in that it connects the defendant with the commission of that crime.

Do you believe for one moment, gentlemen, that

If this was the gun that was in the possession of Henry Moore at the time Larkin was killed, do you think Henry Moore carried this gun with the after that? If Henry Moore knew that he was wanted for the murder of Larkin, do you think for a moment that he would be seen with this gun in his pocket, the very gun that did the killing?

Oh, don't you know, in murders of this kind, gentlemen, when a murder is committed, Walsh, or Roxy Walsh, I don't know who he is, but whoever he is, if he committed that murder and fled from the scene, don't you know he would have thrown the gun away?

If Moore was there and fired a single shot into the body of Larkin, do you think for a moment he would run away from the scene of the accident with the gun in his pocket? Just consider that, gentlemen, as men of reason.

If I run away from the scene of a crime, a murder, after killing a man, and am afraid that I have been seen by people there, seen doing the killing, and I know that the Police are going to be after me, don't you think I would throw the gun away?

But the District-Attorney will say, if Larkin, or Walsh, threw the gun away, somebody would have found it. Perhaps somebody did. We don't know. There were thousands of people there at the time.

You don't think he would have a chance to run through the streets with a gun on him, the very evidence

of murder, two shots being fired from it, the bullets still warm, the barrel still warm. Don't you believe he would have thrown the gun away?

I said to myself this morning, "I thank God the District-Attorney in this case, in view of the seriousness of my responsibility in this case, has asked and that the Court has granted a special Panel in this case." I am glad of that, gentlemen, and if you notice the questions I asked each and every one of you when I examined you as talesmen, that I asked you very few questions, seeing, as soon as you took the stand, intelligence upon your faces. I was glad that we had a special jury in this case, but I don't say that, gentlemen, to make you think for a moment I am trying to flatter you. Special jurors are supposed to be men of intelligence. That is the reason you are selected. That is the reason the Commissioner of Jurors questions you at length when you are examined, and when you get here it is assumed by everyone that you are men of intelligence. I am glad we have this jury in this case.

These little things, gentlemen, sometimes throw up the light of the entire motive in the case; and I ask you to consider, when you retire, do you think for a moment, if that was the gun that killed Larkin, in the hand of Moore, do you think he would have had that gun over a year and a half after the commission of the crime?

Don't you know he would have thrown it away that same night?

Now, Larkin says that Moore came there that night with several others, and paid for some tickets, and then he says some of his friends will be here later. Then again he says Moore came in together with Walsh. Moore came back with Walsh and others.

Shore, his own brother-in-law, related to the man that was killed, tells you that Walsh came there with a girl. Tells you that Walsh came there with a young lady.

Who are you going to believe?

Shore says that Larkin was not there at the time of the shooting. Page 46. "What did you see Walsh do? A I saw Walsh come in the hall. I saw him pay his money. He came in the hall. He had some girl with him, and I saw Walsh going out. He had some girl with him when he came in the hall." That is Shore's testimony.

Now, Shore says that Larkin was not there, and did not see the shooting, Shore, a brother-in-law of Larkin. Larkin denied it. Shore is a brother-in-law of the man that was killed. Who are you going to believe?

What motive has Shore got to come here and perjure his soul to save a man that he never knew, a man whom his brother-in-law claims killed Shore's own brother-

in-law?

Cunningham says that Larkin was not there when the shooting happened. Sonner says Larkin was not there when the shooting happened. Corrigan says Larkin was not there when the shooting happened. Who are you going to believe? Now, the testimony of Shore, gentlemen -- the peculiar feature about this case is the way the District-Attorney tried to get Shore to testify, not from the stand here, but from an affidavit.

Larkin says that Moore came there with Walsh and paid for tickets; Shore says Walsh came there with a girl; but, gentlemen, I am not going to go into the details of the evidence. What I want you to consider is this:

Shore was a relative of the man that was killed. Shore was interested in hunting down his murderer. Shore, nine days after the killing, and it is conceded by everybody in this case who saw the shooting, that Shore was there, Shore, nine days after the shooting, is subpoenaed by the District-Attorney's office, not by us, and I want you bear this in mind, at the time of the Inquest, an inquest held to determine the cause of death of the deceased, not as against the prisoners at all.

At the time of the inquest, Moore was not there, Moore was not in court before the Coroners' jury, and when

a witness, took the stand, and swore he did not see Moore in front of him. Moore was not picked out. There was only one man there, and that was Emil Sauter, that was the same man that Eddie Larkin accused at that time as being one of the murders, and to prove that I read his testimony, where he swore he is positive that he is the man, although they brought five hundred people to swear that was not the man. He was positive in his identification Sauter before the Coroner's jury, and it turned out afterwards Sauter was not there, and he was discharged; and yet this Eddie Larkin, who testified so positively against this defendant here, testified positively against an innocent man at that time, that he was there and did the shooting, and that man was subsequently discharged. It was proved beyond a doubt that he was not in that hall at all that night; and that is the kind of a man the District-Attorney will have you believe and take this testimony and convict a human being on.

Now, Shore testified before the Coroner, and he was asked, "Did you see Walsh there that night? A Yes.

Q How long did you know him?

A since he belonged to the club", meaning the Winnoa Club, and Moore was not a member of that club.

Now, Walsh, the man who is accused here by the Larkins, is a member of their own club, the Winnoa Club. Moore was not.

Then he says, "How about Moore? How long have you known him? I had never seen him. I never knew Moore. Mind you, that was nine days after the shooting. Shore, the brother-in-law of the deceased, he certainly had no motive then to protect Moore. He didn't know him.

This man Moore, what name did he go by? I couldn't tell you. You knew him, didn't you? No, sir, I never knew the fellow before.

Then, further on, this is very important, gentlemen, at page 23, in answer to a question, "Tell whether this is the man", meaning Sauter, who was accused then by the same Larkin as being the same man, "tell whether this is the man", and this same Shore, who is as much interested in hunting down the murders as Larkin was, and this man Shore seems to be a man of some conscience, he did, "no, sir, not to my estimation. I will tell you one thing, I don't know these big lads. I never seen them until this thing occurred. Walsh is the only fellow I know. I don't know Moore, except he is a little fellow. If he was put in front of me I think I could tell him."

That was in 1911, "if he was put in front of me, I think I could tell him". But he swore there he didn't know him. Now, Moore was not before him, and the District-

Attorney, in putting his own witness on the stand yesterday, said to him, "Didn't you sign this paper?"

Of course, he did. "Didn't you say in your affidavit that then Walsh came back, or Walsh was there Henry Moore?".

The name Henry Moore is used in the affidavit. He said, "Yes, I signed it".

Now, that affidavit was signed in January, not subsequent to this testimony here, gentlemen. Then he signs the affidavit in January. This happened in December.

Now, if Shore did not know Moore in December, nine days after the happening of the occurrence, how could he swear in January, when Moore was not arrested yet, that he had not seen him? And he tells you yesterday the first time he saw Moore was right here in court.

In Heaven's name, how could Shore have signed an affidavit that Moore came with him, and he explains that and says some of the boys told him the name Moore, and of course he would not admit Larkin told him that. Think for yourselves, who gave Shore the name of Moore? Don't you believe it was Larkin?

And Shore takes the stand here, you saw him yesterday on the stand, and he says the man that was with Walsh that night was stouter than this man. The man that was with Walsh was stouter than him. "This is not the man?" "Oh, I can't say he is the man; I can't identify

him."

Now, are you going to convict this man on an affidavit that Shore signed in the District-Attorney's office, not under cross-examination at that time, not under cross-examination at that time, using the word "Moore", the name of a man that he does not know and has never seen, and which was told to him by someone else?

Oh, no, gentlemen, you are obliged to follow the testimony from the witnesses on the stand here, and I tell you that Shore, when he says that, that he does not know Moore and never saw him there, he is telling the truth in his testimony, which coincides with the testimony that we produced.

And the significant thing about this whole case, the wonderful thing about this case, gentlemen, don't you know my opponent is a lawyer shrewd enough to know that the important part of this case was to connect the defendant, Henry Moore, with Roxy Walsh?

Oh, if he could have brought witnesses here who could have taken the stand and told you twelve men that they saw Moore that night at that dance hall with Roxy Walsh, oh, what a strong case he would build up.

THE COURT: You have been speaking about, I think, fifty minutes now.

MR. HAROWITZ: What is that, your Honor?

THE COURT: I think you have been speaking about fifty minutes now.

MR. HAROWITZ: Fifty minutes?

THE COURT: I think so.

MR. HAROWITZ: Well, you Honor, I will have to take as much time as I can to cover this case.

THE COURT: Well, if you take all day we can't give the case to the jury today.

MR. HAROWITZ: I can't help that. My client's interest is at stake.

THE COURT: How long do you want to take? All day and all night?

MR. HAROWITZ: No, sir.

THE COURT: How long, then?

MR. HAROWITZ: About another hour.

THE COURT: Another hour?

MR. HAROWITZ: Yes, sir.

THE COURT: Go on. I was hopeful that we could give this case to the jury tonight.

MR. HAROWITZ: I saves as much time as I could in getting the jury, but I feel my client's interest demands that I take up every moment I am going to take. I will not waste a moment. That I say to you.

THE COURT: Very well. Proceed.

MR. HAROWITZ: Roxy Walsh, who was standing at the door. I assume he was. He says Shore.

There was another man by the name of Gardner. Gardner was a witness before the Coroner. Why isn't Gardner produced here?

Is there a living soul, gentlemen, that you can go to your jury-room and say that came here and told you that they saw Henry Moore and Roxy Walsh together for a single moment that night, outside of that one witness, Eddie Larkin? Just think of it, a dance hall full of five hundred or six hundred people, most of them from that neighborhood, knowing each other, not a single witness produced by the prosecution to connect Henry Moore with Walsh.

Now, according to their own story, Walsh was the one that started the shooting. Walsh was the one that had the trouble with Larkin. Walsh was the one who pulled the gun and fired the first two or three shots.

What motive did Henry Moore have in killing Larkin?

What motive did Moore have in killing Larkin? Is there any motive disclosed here in this case by the prosecution? Is there any evidence in this case that Moore and Larkin had at any time any fight?

Motive plays a great part in a murder case, gentlemen, sometimes the most important part in a murder case, when you come to consider whether a man killed another man, you want to know why. It is a question of intent

here.

Murder in the first degree is the taking of human life by another person with intent, which deliberation and premeditation -- deliberation and premeditation. There must be an intent on the part of the man to take a human life. There must be premeditation. A little space of time to consider, to think, to deliberate; he must deliberate.

In order to do that, for a person to intend and to deliberate and to premeditate, there must be a motive, gentlemen of the jury, and I ask you to search your memories, when you go into your jury-room, and see if you can find a single motive ascribed to the defendant, Henry Moore, for seeking the life of Joe Madden. Not a single motive. Not one. Now, Sore's testimony, gentlemen, on the stand here, not the affidavit he signed, which coincides with the testimony he gave before the coroner, the People's witness, not called by the defendant, bear that in mind. You can recognize him, this is from the testimony given in this case, page 51:

"Q. You can't recognize him? A. I could recognize him if I saw the right fellow. I could recognize him if I saw the right fellow, but I don't recognize this man", he says, "the man that is there, that I thought was Moore, was much stouter in the face than this

man."

That is the corroborating witness of the People. He says that Larkin was not there. Whose word are you going to take, gentlemen? Are you going to cast this man into the electric chair, are you going to cast a human soul into the electric chair, are you going to cast him into prison, on testimony of that kind? Oh, gentlemen, I don't think you are. In fact, I know you won't. Now, that is the People's case in a nut shell. I have reviewed the testimony of Larkin and Shore and the expert.

Now, that is the People's case.

Oh, gentlemen, I always had an idea in the practice of my profession that I love so well, that a district-attorney, and I know my friend here always has been fair, but I don't know why he was stepped over the border line in this case, I always had an idea that a district-attorney was a quasi-judicial officer of this Court. I always had an idea that it was the duty of a district-attorney to present to a jury evidence which would tend to exaltate a defendant as well as evidence which would tend to convict, if in his possession; but what would you think of a district-attorney who was trying a man for murder who had written evidence in his possession which, if produced to the jury, would acquit that man, which the defendant's lawyer did not know of, and the District-Attorney kept it in his pocket and did not offer it to the

jury?

MR. WASSERVOGEL: Have you any such proof in this case?

MR. HAROWITZ: No, sir, but I have this proof, sir--

MR. WASSERVOGEL. Just a minute, I ask your Honor to instruct the Jury to disregard that statement,

MR. HAROWITZ: I did not finish my sentence.

THE COURT: If there is no such proof, why do you comment on it?

MR.HAROWITZ: There is no such proof, but there is proof that--

THE COURT: If there was no such proof, it is wrong to refer to it.

MR. HAROWITZ: I did not finish. But there is proof here that Cunningham was a witness for the District-Attorney in the Coroners' Court, There is proof here that Cunningham was subpoenaed by the District Attorney before the Grand Jury. There is proof here that Cunningham was subpoenaed by the District-Attorney in this case, and there is proof here that the District-Attorney did not put Cunningham upon the stand. There is proof here that, when I went outside, without knowing Cunningham, I subpoenaed him, because I had his testimony that he gave before the Coroners' Court, which frees this defendant.

Oh, gentlemen, I went into the enemies camp; I took

a witness produced by the People, without ever having seen him or talked to him, put him upon the stand here, and he gives you the same evidence that he gave before the Coroners' Court. And what does Cunningham say? What does Cunningham say? Has Cunningham any reason to lie?

Oh, my friend put the mother on the stand here. Gentlemen, I didn't have the heart to cross-examine the old lady. I would not ask her any questions. I can feel with her, as you feel with her, the loss of her son.

Oh, gentlemen, my emotions and my sympathies are the same as yours. I did not ask her a single question.

Then the daughter takes the stand, and she told you the crux of the whole thing, when they saw Cunningham the night after the murder. He said "Walsh I know well." I asked, "Did he mention Moore?" he said "no". He said he saw the shooting, and that is why he was called by the District Attorney, and the daughter and the rest of them did not kick about that testimony when he gave his testimony before the Coroner's Court and before the Grand Jury, and it was upon Cunningham's testimony that Walsh was indicted. They did not quarrel with that when he was their witness, but after I put him on the stand he tries to convict Cunningham.

Gentlemen, I believe that every one of you believes Cunningham told the truth. Cunningham corroborates

Shore. He says that Larkin was not there. Cunningham said that before the Coroner. He said that here. He tells you he saw the shooting, and the only two men fighting there were Walsh and the man that was killed.

Oh, don't you know, if he saw Henry Moore there with a gun, doing any shooting, wouldn't Cunningham, the man who owns the hall, the man whose business was ruined by reason

of the shooting, wouldn't he come here and tell the truth? Don't you think he would have a prejudice against the man who came into his place and shot it up? Do you think he would try to shield them? Why would Cunningham lie nine days after the shooting? He told you the whole story. He told you that Madden and Walsh were the only two in the fight. It seemed to him like a fist fight. He heard the shots, but he couldn't tell who had the pistol until they separated, and then he saw the pistol in the hands of Walsh.

Was anybody else there who did any shooting?

No, sir.

Was there anybody else there who fired a single shot? Was there anybody else there who had a gun?

No.

He heard three or four shots.

Now, that, gentlemen -- it is true I called him; he was a witness for the defense, but he is really the People's witness.

Page. 26, before the Coroner: "When the shot occur-

red, where were you? Oh, standing almost within three feet of where the thing occurred.

"Q Did you see a revolver in any one else's hand?

A I saw a revolver.

"Q Did you see a revolver in any one else's hand?

A No, sir. only one."

That was on December 19th, 1911, nine days after the shooting.

"Q Did you see a man they call Moore?", page 27.

"A I don't know him.

"Q Did you see anyone else with a revolver?

A No."

Now, gentlemen, need I dwell any further in going into the details of that? Here Is a man, Shore, here Is a man, Shore, the brother-in-law of the witness Joe Larkin, here is a man named Cunningham, and here is Sonner, and Corrigan, the two witnesses I called, who swore that Larkin was in the hall when the shooting occurred. All of them say that Larkin was not there.

Gentlemen, I intended originally, when I opened up my case to you, I felt the People's case was so weak that I was not going to put in the rest of the case; I was going to call two witnesses to prove that Larkin lied, and rest my case. I didn't think I needed to go any further, until my friend made that theatrical display and got the gun before you. Then I determined to put in my entire defense.

You will remember I said, when I opened my case to you, I hardly intended to put in any defense.

Is there anyone of you gentlemen who do not agree with me? Am I not reading the evidence from the record? Is there anyone of you gentlemen who can disagree with me on this proposition?

So, you see, it comes down to a question now as to whether you are going to believe Eddie Larkin as against Shaw, Cunningham, Sonner, Corrigan, Silver, Jacob Cohen, Reddy, and the other witnesses who swear they were in the saloon there, and eight or ten other witnesses who were on the stand, the boss of the defendant, and several other men, as against this man Larkin. That is the sum and substance of the whole Proposition.

Now, so far, gentlemen I have not said a word as to the witnesses for the defense.

Now, our friend, Officer Flynn, says there was an alarm sent out. The alarm is not here. It is not in evidence. We don't know whether that is so, or not. I doubt whether it was sent out. I suppose an alarm was sent out for Walsh. He says, and he attempts to insinuate that Henry Moore ran away from the scene of the murder.

Now, evidence of flight, gentlemen, when a man commits a murder or a crime, or a man is accused of crime, and he runs away from the scene of the crime, or the neigh-

borhood where he resides and disappears. It is some evidence that a Jury may take into consideration when a case is tried as to his guilt, and it is sometimes evidence of a defendant 'a guilt.

Finn tried to convey to you that this defendant after this murder escaped and ran away. The alarm was sent out. I asked him, "Did you know Henry Moore?" He said, "No".

How could he have arrested if he had seen him, if he did not know him?

Did he bring a single officer here?

Oh, gentlemen, just see how this case is lacking in detail as far as the prosecution is concerned.

Was an officer put on the stand who claimed he went to Henry Moore's house on the night of the murder, or the next night, or the next day, or the next week, or the next months, and that he could not find Henry Moore? Is there a witness in this case that told you he went to Henry Moore's place of employment and could not find Henry Moore? Oh, no, not one.

I produced here, gentlemen, his boss, and I produced a man by the name of Baedecker yesterday upon the stand, who says he acts as the pay-master for Cohen, and who pays his men off, and who says that he paid Moore off every Saturday. I produced seven or eight other witnesses who worked with the defendant, to show --

Now, what does Cohen say. Cohen says he has been employed by him for the last two years. All the other witnesses say the same thing, that he had been working there for two years.

Now, this murder was committed In December, 1911, about a year and nine months ago. The defendant, Henry Moore, was working for Cohen before the murder.

Now, just think of a man committing a murder in December, knowing that he is wanted for it, if my friend is going to claim that is the case, although there is no evidence to show Henry Moore knew he was wanted for the murder, he would go back to the earns place of employment and continue working there.

There is no testimony to contradict that. My friend would not even cross-examine some of these witnesses, Cohen, Baedecker and the rest. He knows why.

Now, just think of this proposition: Here is William Moore, who continues in the same place of employment right after the shooting and up to the time he is arrested, and this man who was on the stand this morning, McCable, tells you he saw him within three hundred feet of a police station a month or so before he was arrested.

And several of the other witnesses tell you they saw him in the neighborhood all the time.

Now, do you think for one moment that Henry Moore committed this murder? Do you think for one moment that

Henry Moore knew he was wanted for that murder? Do you think for one moment that Henry Moore would have remained in that immediate neighborhood, remained in the same place of employment, continue to do his daily work from the time of the shooting until the day he was arrested, if he knew he was wanted for that murder? He was not a fool, gentlemen.

So, that disposes of that theory, the theory that my friend tried -- I mean the officer tried to convey, that Henry Moore flew after the murder. I think, gentlemen, I have presented that issue pretty squarely to you, and I think you will agree with me that that is so.

Now, we have in this case, in addition to the testimony that I have just discussed, a defense of an alibi. "Alibi", as the Court will explain to you, means, "elsewhere", some other place.

If a man is accused of crime, if I was accused, say, of committing a murder today, and I can bring you twelve men at my trial who show that I was in court today at three-thirty, pleading for the cause of Henry Moore, that would be an alibi. That would be a pretty good defense, the best defense I, think a man could produce.

Now, gentlemen, the peculiar thing about this whole thing is that every witness who took the stand, Jacob Cohen, Altier, Silver, eddy, the bartender, they all sub-

stantially tell the same story, and my friend was not able to shake any one of them on cross-examination. They are all men of good character, men of reputation, men who work for their daily livelihood, men without a spot or a blemish upon their characters, and they take the stand here, and do you think for a moment, gentlemen, that they would come here to perjure their souls, to take a chance of going to jail, to save Henry Moore? What evidence is there of that? You have seen them upon the stand. You have observed their demeanor. You have heard their stories. Isn't it the most plausible thing in the world?

Oh, if you or I, Mr. Foreman, or anyone of you gentlemen, were out walking in the street on a certain day, and a murder occurs, and we witness it, or if we hear shots?, and we then learn, the minute after, that a certain man is killed, I tell you that occurrence and that act would remain in your memory as long as you lived. You would carry that with you for years, and you would remember well who was with you at that time. It is not an occurrence that you see every day.

These young men upon the stand here, all working, all respectable, decent fellows, were impressed by that shooting, and when they learned that Henry Moore was arrested for the first time in July, charged with the murder of Edward Larkin, my God, says they, he was with

us when this shooting happened.

And what do they do? Two of them, Altier and Silver, meet, and they discuss it. They said, "Don't you remember that we were there in that saloon that night? Certainly. And Jake Cohen, the man who worked in Cohen's place, not related to Cohen, for two and half years, who knew Moore from childhood, went to school with him, who had chummed with him after he came to the same Place to work where he worked, remembers that he was with Moore that night, remembers that he went with Moore to that affair, remembers that he was in the dancehall for a little while, remembers that he went out with Moore to have a drink, and when they had that drink they heard the shots, and they afterwards learned that Larkin was killed.

What would you do, Mr. Foreman, or any of you gentlemen, knowing that a man is innocently accused of crime, a man whom you know, a man whom you knew you were with on the night he was accused of shooting? Why, you would do everything in your power to aid him. You would do everything in your power to get the witnesses who knew you were there together. You would do everything in your power to assist him in his defense, and that is nothing more nor less than Jake Cohen has done in this case.

He goes to the Toombs to see Moore.

He said, "Oh, Henny, I remember this night. Don't you remember this night. Don't you remember that we were together?" "Yes, I remember, and I remember Silv-

er was there, I remember Altier was there, and I remember the other man, the bartender, was there"; and he goes up two days afterwards and he meets Altier, and they discuss the situation, and they all agree they were there, and then he brings them down to my office.

Now, gentlemen, I don't know that my friend will say anything about that, but a lawyer who will put a witness on the stand in an important case without having spoken to him himself first is a fool. There is no crime in a lawyer speaking to a witness. The District-Attorney sends for their witnesses, and takes down their statements, and examines them at length. We have the right to do the same thing. Before I put a witness on the stand I want to know what he knows. A witness may tell a story altogether different than expected. In order to defend a case properly, a lawyer should send for his witnesses, and find out what they know. I send for a witness, for instance, and he tells me so and so saw the shooting, or was there at the night of the shooting, and so and so was there with Moore at the time that the shooting occurred. I say, "bring them down." I ask them the story. I take their stories and present them in court here. That is a lawyer's duty to do that.

But my friend will say, "Oh, Cohen was very active in the defense of Moore", and so he was, and much more praise for him. Cohen knew that William Moore was

innocent, the moment he heard he was arrested. Cohen knew he was with him at the time of the shooting. Cohen knew he could not have had a hand in the shooting, because he was in the saloon, drinking, at the time.

Cohen spent much time going around through the neighborhood and seeking the different witnesses and bringing them down to my office. I tell you, gentlemen, I commend him for that, and I know you will, too.

Do you think four witnesses can get upon the stand and swear to an alibi of this kind and be able to go through a gruelling cross-examination such as my friend is capable of without some hitch or some inkling to give you the impression that the men we re lying? Have you ever seen men take the witness stand and stand cross-examination better than these four men? I have not, gentle-men. And it appears to me from the demeanor of their faces, from the attitude they took, from the way they answered questions, that they were all telling the truth.

Now, gentlemen, I am almost finished, and I ask you to take into consideration every bit of evidence in this case. I ask you to consider parts of it that I perhaps have left, out, and that may be fresh in your memory. I ask you to go into your jury-room and give this defendant the fair and impartial trial which he is entitled to. I ask you to consider every bit of evidence in this case, and I ask you, with all sincerity, you, Mr. Foreman, and

you, Mr. Friend, you, and every gentleman of the jury, what is there from the evidence in this case that will authorize anyone of you in saying in your jury-room, under your oaths, and under your consciences, that you are convinced beyond all reasonable doubt that Henry Moore, on December 10th, 1911, stooped down, down, from the station in which he now is, without any cause, without any motive, without any reason at all, to fire a shot into the body of Joe Madden?

What is there, I say, gentlemen, from the evidence in this case, that will authorize you in saying that you are convinced beyond a reasonable doubt that this Duster gang member, Edward Larkin is telling the truth, and these other ten or fifteen men are lying?

What is there, I say to you, that will authorize you twelve men, from the evidence in this case, to take away, not only the life of this defendant, but his liberty even for a single day, what is there, gentlemen, in this case?

I ask you that, when you go to your jury-room.

And before I close, gentlemen, this is the last word and the last chance that Henry Moore shall have had in this case to say a word in his behalf, what is there in this case that will authorize you, as twelve sensible business men, in even compromising on a verdict?

Jurors sometimes in murder cases say "well, they

have not proven murder in the first degree, they have not proven murder in the second degree; we will give him manslaughter."

For God's sake, gentlemen, don't do it in this case. Don't do it in this case. Don't put the stamp of murderer upon Henry Moore, twenty-two years of age, by convicting him even of manslaughter.

Oh, don't brand him with this horrible crime, that he shall carry with him through his days.

Oh, don't, gentlemen, put the stamp of felon upon his brow on such evidence as is presented in this case.

Oh, don't consider this, which as I have said before, another jury will pass upon. If he was guilty and had no right to carry that gun, he will then pay the penalty.

Go into your jury-room, gentlemen, and follow the instructions of the Court on the law.

You are the supreme judges of the facts. Give to this defendant the fair and impartial trial to which he is entitled, and, in conclusion, I say, gentlemen, may God guide your deliberations.

I thank you.

THE COURT: Now, Mr. District-Attorney, do you wish to begin your summing up?

MR. WASSERVOGEL: Counsel has taken somewhat longer than I anticipated, and, in view of the fact that your

Honor has indicated that you did not wish to submit the case to the jury tonight --

THE COURT: Oh, I am not going to submit the case to the jury and keep them here tonight.

MR. WASSERVOGEL: I prefer to sum up Monday morning, and I think I will be able to sum up within three-quarters of an hour, on Monday, so that the jury can have the case by half past eleven.

THE COURT: Gentlemen, I would give you this case if there was any assurance that you would quickly come to an agreement. You cannot give me that assurance, and I cannot insist upon it, and experience has taught me it is much better to give a case to a jury earlier in the day than late at night; their minds are better, and they are better able to reason together. I don't feel that I ought to make the District-Attorney take two bites of a cherry, so to speak, and divide his summing up.

MR. WASSERVOGEL: I will not take more than three-quarters of an hour on Monday morning.

THE COURT: If you gentlemen could have completed the case by four o'clock, I would have given it to the jury, but I do not feel that it is right to keep them here much later. (To the jury) Do not talk about this case among yourselves, nor permit anyone to talk to you

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about it, nor form nor express any opinion thereon, until the case shall finally be submitted to you.

Monday morning, ten-thirty sharp.

(The Court then accordingly took a recess until Monday, October 27th, 1913, at 10:30)

THE PEOPLE, ETC., -against- HENRY MOORE

New York, Monday, October 27th, 1913.

TRIAL CONTINUED

THE COURT: Now, are you ready to begin summing up?

MR. WASSERVOGEL: Yes, sir.

THE COURT: HOW long do you want?

MR. WASSERVOGEL: Less than an hour.

THE COURT: Proceed with your summing up.

Mr. Wasservogel then summed up the case to the jury on behalf of the People, as follows:

May it please your Honor and gentlemen of the jury:

You have not decided this case yet, have you? You have not made up your minds yet, now, have you? And you are not going to make up your minds until the last word has been spoken. Now, will you?

So that there may be no misunderstanding, gentlemen, let me call your attention at this time to the fact that the person whom we are trying, charged with the commission of this crime, is this defendant, Henry Moore, and that we have not been trying any of the persons who have testified for the People in this case.

Let me also call your attention to the fact that Assistant District-Attorney Skinner testified that this defendant after his arrest admitted to him that he was present in this dance hall on the night of the shooting,

and that he refused to say anything else about the affair, and that the testimony of Mr, Skinner stands on the records of this court absolutely uncontradicted.

Now, it is also conceded, of course, that Joseph Larkin died on the 11th of December, 1911, as the result of bullet wounds received by him on the night of the 10th of December, and that these bullet wounds were received by aim in a very tough dance hall in one of the worst parts of this city.

The affair that night was given, as my friend has told you, for the benefit of a man who was then charged with crime and who we have since then sent to State Prison; so that you see we take these cases as they come up, and we try them all impartially, and dispose of them one at a time.

Now, you will remember that at the coroners inquest, which was held in December, 1911, and in the indictment in this case, which is part of the records of this court, the persons who were named as the defendants in this case were James Walsh and Henry Moore, and they were the persons who were named as defendants from the very beginning of this case.

Now, Edward Larkin was the first person whom the State called as a witness in this case. Larkin is the young man who for the past four years has been employed by

the stock brokerage firm of Wardwell & Adams, at 111 Broadway.

Fearing the impression which Larkin would make upon you gentlemen, my friend tried to impeach his testimony, and he asks him questions like this, for instance:

"Isn't it a fact that you shot a man named Sullivan?"

"Isn't it a fact that you stabbed a man named Meyer?"

Now, if young Larkin had ever shot a man, or if young Larkin had ever stabbed a man, he probably would have been arrested at some time or other, and records would have been available which would have been called to your attention. You will remember I asked the counsel, "If you claim that Larkin ever shot a man, if you claim he ever stabbed a man, produce your people here in court, and we will find out what is the truth about this; but they were not produced, and they were not produced because they never existed.

Now, I don't want to criticise the counsel. I realize that when a lawyer is retained by a client, and is paid by client, and well paid by a client, that he

owes him some duty; but it is no part of a lawyer's duty to try to lead jurors off the track. It is unfair to a witness, it is unfair to the Court, and it is unfair to jurors.

Now, what does Larkin say?

He says, in the first place, that he knew Henry Moore, and that he had met him that very afternoon. Now, this is also absolutely uncontradicted in the record in this case. And Larkin says, referring to the time of the shooting, "My brother was just going up, and he met him, Walsh, on the top of the stairs, and Walsh placed a revolver against his stomach and fired once. I don't know whether it hit him in the stomach, or in the hand; he was shot in the hand and he was shot in the stomach; and he fired again; and the second time he fired my brother wheeled around, and before he wheeled around Moore placed a revolver against his back and pulled the trigger a couple of times; it didn't go off; and after the second shot my brother turned around to the left, and Moore fired into, his stomach, and then Moore ran downstairs." In the Coroners' Court, on the same subject, gentlemen, Larkin testified that his brother Joseph tried to grab the revolver, and Moore came behind him and placed the revolver against his back. "He then pulled the trigger three or four times, but it did not go off. Then Walsh fired another shot. "What did Moore do? A. He fired the shot in his stomach.

"Q. Did you see that shot fired? A Yes."

Now, gentlemen, the question at once suggests itself, "What motive did young Larkin have for lying? Why

should he never pick out Henry Moore as the one who did this shooting? Why pick out Henry Moore of all the young men in the county of New York, and say William Moore did this shooting? He didn't pick out one of you, he didn't pick out me, he didn't pick out one of these defendants' friends who are in the back of this courtroom. He picked out Henry Moore, and Henry Moore and Walsh were the only persons who young Larkin charged with the commission of this crime from the very beginning.

My friend had much to say about a witness named Shore, whose sister married a brother of the deceased.

Shore, for some reason, whether it was fear or otherwise we have been unable to ascertain, apparently had a change of heart, and was unable positively to identify the defendant. But even Shore admitted in the Coroners' Court that there he testified that Moore fired the third shot.

In an affidavit made by him in the District-Attorney's office on the 25th of January, a few weeks after the shooting, he said, among other things, "In about ten minutes Walsh came out with Henry Moore. Both of them were a little drunk".

And then on this trial:

"Q. Do you remember also having said that you heard some one say, 'here comes Walsh'? A. Yes."

"Q. And the dead man at that time was standing near

the door, was he?

A. Yes, near the door.

"Q. And you walked to the head of the stairs?

A. I walked to head of the stairs.

Q And do you remember also in your affidavit saying, 'and just as I got there Walsh and Moore and a third man came upstairs.'; do you remember that?

A. Yes.

"Q. Did you see the shooting?

A. Yes, sir.

"Q. How many men did you see fire shots?

A. Two men."

Not, one. He said two men fired shots.

"Q. And you saw a gun in the hand of this man, did you?

A. Yes.

"Q. Did the dead man have a gun?

A. No, sir.

"Q. Can you tell us the position of the men who were firing the shots with reference to the man who was shot?

A. He was coming up the stairs, and this other fellow after. There was a gun in the fellow behind Walsh's hand, and he pulled the trigger about four times before the bullet went off. That was Moore. He was the last one to shoot. You could hear the gun click." He says, "I laid under Madden's feet; Maiden fell over me; I couldn't get up".

And, furthermore, "And you also said in your affidavit, 'when I got up again Moore'" -- Moore, again, gentlemen, there is --

MR. HAROWITZ: Now, if your Honor please, I

think it is object time to object to this, for this reason: Mr. Wasservogel is reading a statement from an affidavit signed by tile witness. The same witness on the stand said that at the time he signed the affidavit he did not know the defendant and never saw him.

MR. WASSERVOGEL: I am reading from the record of this trial.

MR. HAROWITZ: I don't believe that is fair.

THE COURT: If Mr. Wasservogel is reading from the sworn testimony, I have no right to stop him.

MR. HAROWITZ: No, he is reading from an affidavit.

MR. WASSERVOGEL: No, I am reading from the record.

MR. HAROWITZ: The witness swore he did not know Moore.

MR. WASSERVOGEL: I don't want Mr. Harowitz to sum up three times in this case, and I don't want to be interrupted.

THE COURT: Confine yourself to the record, Mr. District-Attorney.

MR. WASSERVOGEL: That is what I am doing.

MR. HAROWITZ: I take an exception.

MR. WASSERVOGEL: And he was asked this quest-

"Q. And you also said in your affidavit, 'when I got up again Moore had a un pointed towards Joe Madden, and Moore fired a shot?'" and his answer was "that was the last shot fired, yes, sir."

Then, on cross-examination, when my friend tried to find out whether this witness was mistaken or not, he asked him:

"Q. Now, if you did see the fellow that was with the fellow who did the shooting, would you know him?".

Now, what was his answer to that, gentlemen?

He said, "Well, I am not positive, because I didn't get a good look at him; it happened, in, such quick time I never expected it, and the fellow stood behind Walsh."

So, there, gentlemen, you see that even he does not say that this defendant Moore was not the man, and he is very positive that there were two men engaged in this shooting, and not one man, as Cunningham would have you believe.

Now, when the defendant was arrested, he was attending a funeral, and he had in his possession this gun.

No, gentlemen, his gun was introduced in evidence only as a circumstance showing the probabilities in this case.

You will remember that Lieutenant Jones told you that the two bullets which were found in the house of the decease-

ed were marked in a certain way, which indicated to him that those bullets were fired from a revolver the barrel of which was out of alignment. You will also remember that Mr. Jones, Lieutenant Jones, testified that the gun which was found upon the defendant's person at the time of his arrest, that that gun also had a barrel which was out of alignment. Now, we don't claim that both the bullets which were found in the body of the deceased were fired from the same revolver. We don't claim that as an absolute fact. We don't know. We don't claim, gentlemen, as an absolute fact, that this is the gun from which those bullets were discharged. We don't know. It may be that, in the excitement of that shooting, that Moore could have fired two shots and it might not have been noticed. It may also be that Roxy Walsh also had a gun the barrel of which was also out of alignment.

But, it certainly is a strange coincidence that the gun found upon the defendant's person should when used have the same effect upon bullets as did the gun from which the bullets were fired which were found in the body of Joseph Larkin.

What is the defense in this case? What manner of man have we to deal with here, gentlemen?

This defendant realizes that his situation is a desperate one. He realizes that is necessary for him

to introduce some defense in this case, and I now charge that he has framed up one in an impudent attempt to have your twelve men believe what Henry Moore in his own heart and soul knows to be false.

Who is it, gentlemen, that tells you that Henry Moore was not present at the time of the shooting? Who tells you that? Four of his boon companions. You remember one of them said that they walked away because they were afraid of being picked up. Why were they afraid of being picked up, if they had done no wrong?

It may be that this defendant and several of his friends had drinks together that night. They probably had drinks together upon previous nights, on many occasions, but when those men told you that Henry Moore was not present at the time of the shooting, gentlemen of the jury, they lied, and no one in this courtroom knows it better than Henry Moore; and if you twelve men were to acquit Henry Moore upon their testimony, he would laugh up his sleeve to think that you were so easy, so easy.

Several witnesses were produced here who testified that they knew this defendant by sight only. You remember that term. You remember the said, "I know him by sight only". Whether they were ashamed of this association with him or not, gentlemen, I don't know, but at any rate you remember a young fellow named Corrigan, he

was asked "You know most of the young men in the neighborhood?"

A No, sir, I don't come from that neighborhood. I live in Forty-seventh Street and Eighth Avenue.

"Q. That is also on the west side, isn't it?"

A. Yes, sir, but that is a big difference.

"Q. Do you belong to the Winnoa Club?"

A. No, sir, I do not.

"Q. You would not belong to that club, would you?"

A. I would not."

He was ashamed of it.

"Q. And that is a pretty bad club, isn't it?"

A. From what I heard of it, yes.

"Q. You would not belong to a club of that kind, would you?"

A. I certainly would not.

"Q. But when you heard that one of its members had been looked up and was in the Toombs --"

MR. HAROWITZ: He was not one of its members, Mr. Wasservogel. Moore was not a member.

MR. WASSERVOGEL: May I not read from the record in this case, without being interrupted by counsel?"

MR. HAROWITZ: I withdraw my remark. I thought he was referring to the defendant, Moore, being a member of that club.

MR. WASSERVOGEL: You remember, gentlemen, that this witness said he had to by a ticket for this

affair for the benefit of somebody who was in the Toombs, and he was asked:

"Q. You would not belong to a club of that kind, would you?

A. I certainly would not.

"Q. But when you heard that one of its members had been locked up and was in the Toombs, you thought you would buy a ticket for the benefit?.

What is his answer?

"A. Yes, I would pay thirty-five cents any day in the week rather than have trouble with them. It pays me to pay thirty-five cents and keep away from them."

But he kept away from them by going to the affair that night. That is the way he kept away from them.

And then, referring to the time when he claims that he ran out, after the shooting, he says, in answer to these questions:

"Q. And at that time, seeing a man lying there, did you know he had been shot?

A. I didn't know he had been shot, but I heard the shots fired. I didn't know whether he was injured or not.

"Q. Did you see the blood?

A. No, I did not.

"Q. He was not bleeding at the time?

A. I didn't notice it.

"Q. Weren't you too excited to notice it?

A. Yes, sir, I sure was.

"Q. Did you see other people around?

A. I did

when I turned.

"Q. Quite a number of other people coming out of the hall?

A. Yes, sir.

"Q. Now, you say that young Larkin came running out of the vestibule and ran over to the bannister?

A. Yes?

You remember, gentlemen, he said that Larkin came up after him, and that young Larkin said "get the something or other, they shot Joe."

"I heard him say that."

"Q. You heard him say, 'they shot Joe'?"

A. Yes.

"Q. So that you received the impression from his remarks then made that he already at that time knew that his brother Joe had been shot by some people who had run downstairs?

A. From his words, yes, sir."

So, gentlemen, if Larkin had been in the hall, and had not been present at the time of the shooting, and had not known who it was that was shot, is it reasonable to believe that he would run towards the banister and, shouting after the some people who were running downstairs, that he said, "there they go, the blankety blank, they shot Joe."?"

You also remember that young Larkin -- that the testimony in this case is that Larkin was taking tickets outside, and that he went in the hall and came out again

that he had done that frequently during that night, and Larkin also testified that when he saw his brother shot

down he ran into the hall to get a glass of water to give to his brother. And if this young man Corrigan did see him come out, it was as he was coming out with this glass of water, and not otherwise.

Several of the defendant's witnesses testified that the defendant -- they don't know when, but after the shooting -- moved over to Jersey somewhere, they don't know just where. They also said that at various times since this shooting they had seen him in New York.

That may be true. I did not even take the trouble to cross-examine them on that.

It is well known, gentlemen, that nowhere is a criminal so safe from detection as in the heart of a big city, and you probably will recall, about a year ago, a prominent case in this community, where the police were hunting all over the country for men charged with the commission of a serious crime, and where they were finally found living in a modest little flat over in Brooklyn. So, there is nothing to that.

Then, we come to Mr. Cunningham. Now, what does Cunningham say? Cunningham, you will remember, was the saloon keeper, who was also the owner of this resort in West 36th Street, who has dealings with the various members of these social clubs, and who, we contend, was afraid to identify Moore; and if we had Walsh here charged with this crime, he would say "I don't recognize Walsh".

Why, do you know that that man's life would not be worth a button, living over in that section of the City, he dared identify Moore as one of the men charged with this shooting? But even he says that, while there were six or eight men around him at the time, he could, not recognize a single one of them.

Do you remember that Mrs. Larkin and her daughter both told you that shortly after the shooting they had occasion to go to Cunningham's place for the overcoat which the deceased had worn on the night of the shooting, and they talked with him about the shooting, and they said to him, "We understand this shooting was done by a man named Walsh and a man named Henry Moore?", and Cunningham said, "that is right, Mrs. Larkin".

And Cunningham then said to Mrs. Larkin, and the young girl was certain, and you saw both those witnesses on the stand, and there is no reason why they should lie, that he knew Walsh, and had known him for some time; that while he had not known Moore, that he would be able to identify him.

Now, gentlemen, I am not going to take as long as I thought I would, but I want to call your attention to a remark made by my friend during his summing up, in trying to find explanation for this gun which was found on the defendant's person at the time of his arrest

He says to you, in his melodramatic way, knowing that

the Larkins were after him --- listen to this carefully, please, gentlemen, because it has a very important bearing upon this case -- knowing that the Larkins were after him, those desperate Larkins, one of them in Sing Sing for robbery, one of them the desperate character that we see here -- you remember the young stock clerk he referred to -- oh, is it any wonder, says Mr. Harowitz, that this defendant had a gun?

And then, further, you remember this, Mr. Friend, don't you? "What would you have done under the circumstances, if the Larkins were trying to put this murder up to you, and if you knew the desperate character of the Larkins, wouldn't you be justified in fortifying yourself?"

Now, let me read this to you again: "What would you have done under the circumstances, if the Larkins were trying murder up to you, and if you knew the desperate character of the Larkins, wouldn't you be justified in fortifying yourself?"

Now, in the very next breath the counsel said -- listen to this -- "If Henry Moore knew that he was wanted for the murder of Larkin, do you think for a moment that he would be seen with this gun in his pocket?"

Now, you can't blow hot and cold at the same time. If the second statement is true, gentlemen, that Henry Moore did not know he was wanted for murder, what reason

was there for his fearing the Larkins? What reason, gentlemen, did he have for fearing the desperate Larkins other than the consciousness of his own guilt? Because you remember that every one of their witnesses told you that they had not heard that Moore was in any way connected with this case; until after his arrest.

You remember that, don't you? Can't you see it all, gentlemen? Isn't it all plain to you? Can't you read between the lines in this case?

There was murder committed in this town on the night of the 10th of December, deliberate, premeditated murder, and in coming to your conclusion in this case, bear in mind that the record is uncontradicted to the effect that Henry Moore knew Edward Larkin, and that he was present in this dance hall on the night of the shooting.

But if there is a single man among you twelve men who will say that he conscientiously believes that Henry Moore had nothing to do with this shooting why, to that man I say, acquit him, acquit the defendant, because the State is not looking for victims, the State is not looking for blood. The State simply asks for justice. The State simply asks that its laws shall be enforced, and nothing else.

boat its laws shall be enforced, and nothing else.

It is part of the law of this State that no conviction shall be had for murder in its first degree unless there shall be proof of both premeditation and deliberat-

ion. Now, I do not propose to encroach upon the prerogatives of the Court by attempting to define these words to you, but I am going to ask you gentlemen to listen carefully to the definitions of these two words when they are given to you by his Honor, and if, after listening to them and weighing carefully his words, and then only, if then you come to the conclusion that the evidence in this case of premeditation and deliberation is not sufficient, in that case, gentlemen, the State will be satisfied with a conviction of murder in its second degree.

I realize full well that a criminal trial, gentlemen, is a serious matter for a defendant who is on trial, but it is also a serious matter for the people of this community, the community in which you and I live, the community which you and I love and for which we demand respect in spite of everything, and when a man is charged with the commission of crime, and is brought to trial before a duly constituted court, and is proven to be guilty, and then a jury, representing the business intelligence of the community, says, "Oh, what do we care about the evidence in this case? He looks like a nice young fellow. We will let him go. He won't be apt to do it again", why, gentlemen, then the criminal law becomes impossible of enforcement.

We are trying our utmost to enforce the criminal

law in this community. At times it is a very difficult task. We have to contend with perjury, with witnesses who refuse to testify, with others who even change their testimony; and it becomes necessary, gentlemen, for jurors to use their good business judgment, their good common sense, in determining the motives which actuate witnesses in giving the testimony which they do.

Gentlemen of the jury, Mr. Foreman and every one of you gentlemen, without your assistance can't do nothing. Will you help us enforce the law? That is all that we ask of you.

On the evidence in this case, I contend, just as seriously as I can, the State is entitled to the conviction of Henry Moore, and we ask that of you twelve men.

THE COURT: Now, if anyone wishes to leave the room, they may have opportunity of doing so now, because during the charge of the Court I shall not permit passing in and out. All who wish to leave the room take advantage of this lull and recess to do so.

THE COURT'S CHARGE

FOSTER, J.:

Now, gentlemen, your work is nearly at an end. You have heard the evidence in the case. A Jury trial, in some way, resembles the Court of public opinion. You gentlemen, selected as you are by law from different callings, different walks, different stations in life, each with a different experience, may be said to fairly represent the common sense of the entire community.

It is the duty of The People, who are represented by the District Attorney, to lay before you all the evidence they can get which tends to prove the guilt of the defendant of this charge made against him by the Grand Jury.

Then the opportunity is given to the defendant's Counsel to disprove it, with such evidence as he can produce, tending to answer The People's evidence and to disprove the charge made; and you gentlemen are to weigh it up in the balance, and say whether, beyond any reasonable doubt, the defendant's guilt has been proven.

So jealous is the law of the rights of those accused of crime that it provides that no one shall be convicted unless beyond any reasonable doubt the evidence proves

the guilt. So that, if you entertain any reasonable doubt on any question of fact, you will determine that reasonable doubt in favor of the defendant.

The term "reasonable doubt" in Court has precisely the meaning that it has in the world outside.

All that is expected of you twelve men is that you will weigh the evidence, and then honestly decide this case, with the same care, the same just, fair-minded decision that you give to the weighty and important affairs that confront you in your daily life. If you do that, gentlemen, you are doing your full duty to The People on the one hand and the defendant on the other.

With the consequences of your verdict, you are not in any respect concerned. Remember that. You are not here to say whether this boy ought to go to State prison, or whether this boy ought to go to Elmira, or whether this boy ought to go to the electric chair, or whether this boy ought to go free, or whether this boy ought to be branded and placed on parole. None of these matters concern you in the least. I am not responsible for them. The district Attorney is not responsible for those matters. The law determines the course which shall be taken; not you gentlemen.

You are here to determine the questions of fact

involved in this case, and from those question of fact to determine the one supreme question of fact, and that is, does the evidence prove the defendant's guilt? And you violate your oath, gentlemen, if any other consideration enters into your minds.

You will recall that you and each of you took an oath when you went into the Jury box a true verdict to find in accordance with the evidence. You remember that. Now, do that and you will do your full duty.

Sometimes I find that jurors feel that they are called upon to do justice, that they are called upon to determine a question of punishment, that they are called upon to do various things that the law does not call upon them to do at all. Now, the one question is to determine honestly and in accordance with the evidence the question whether the defendant's guilt has been proved.

It is obvious, isn't it, that if it is your duty to determine whether or not the evidence proves the defendant's guilt of the crime of murder, you must first of all know what acts the law says constitute murder ?

Therefore, I am going to tell you in a moment the legal definition, and show you how we safeguard that in the interest of The People on the one hand and the defendant, on the other.

It is within your discretion solely to determine the truth. You have heard the witnesses; you have seen the, witnesses; you know the surrounding circumstances of each witness's testimony; so that you are in a position to determine how much of credibility you shall give to the testimony of each and every witness.

You know, in our experience with men, that some men have greater powers of observation than others; that some men possess greater powers of memory; that some men are more fluent in speech than others, and can, therefore, more exactly describe that which is in their minds; and you know that some men wholly fail in that respect, and, however clear the image in their own mind may be, by reason of their weakness of memory, or verbosity of vocabulary, or wish not to tell the truth, they fail to reproduce the impression which the truth has made upon their own minds; and it is necessary for you gentlemen to consider that when you weigh the testimony.

You know, I think every one of you knows, I know it, and I have it borne in upon me fifty times a day in the matter of discussion of politics, that the wish is father to the thought, and the man who comes to you and tells you what is going to happen is, nine times

out of ten, biased in giving his testimony by his wish. The man who wishes the success of the Republican ticket predicts its success, and asserts those facts which are favorable to that ticket. And vice versa.

So it is with witnesses. Witnesses of ten times are interested. They often times have a feeling of friendship or of hostility, and that biases and colors,

though not always dishonestly, the testimony which they give; and it is for you gentlemen to recognize that motive, and to make the proper allowance for it. That is what I call using your own common sense; and the law expects you to do that, gentlemen.

As the case has been so recently tried and so fully summed-up, I shall not refer to the facts of the case. It is plain and simple.

Did this defendant do the shooting? Did this defendant do the killing? If so, did that killing amount to murder? Those are the questions for you to determine.

This case is one of homicide. Homicide is divided into murder and manslaughter.

I take it there is no defense of excusable or justifiable homicide here? The defense is one of denial, is it not?

MR. HAROWITZ: Denial, and an alibi.

THE COURT: Well, denial, and under denial there comes an alibi.

Now, gentlemen, taking up, first of all, the charge against the defendant, and not the defense, you have, I repeat, two charges, murder and manslaughter and the primal distinction between the two is that of intent to kill, or design to kill. If I intend to kill you, and do kill you, Mr. Foreman, I would then commit the crime of murder, because I designed and intended to kill.

If I killed you accidentally, or killed you without any intention to kill you, but in a wrongful way, I would be guilty of manslaughter.

I am going to elaborate these distinctions in a moment, so follow me, and do not permit what I am now saying to control your understanding of the case. I only want to bring to your attention at this time that the primal distinction between murder and manslaughter is that murder is committed with a design to kill, and in manslaughter there is no such design.

First of all, you are called upon to determine whether the defendant, at the time and place charged, killed the deceased. If he did, then determine whether the case is one of murder in it is first degree.

The killing of a human being, unless it is excusable

or justifiable, is murder in its first degree when committed from a deliberate and premeditated design to effect the death of the person killed or of another.

Somebody killed the deceased with a pistol shot wound. I take it there is no dispute about that. Was it this defendant? If one takes a pistol, aims it, when it is loaded, pulls the trigger and shoots and kills, isn't it fair and reasonable to infer that the one who so drew the pistol, aimed it, then, with the operation of the mind pulled the trigger and killed, intended to kill? That is applying common sense to the true facts, is it not?

It is for you to say, from the facts of the case, whether the one who did discharge a pistol and did kill the deceased, first of all, was the defendant, and, if it was the defendant, then did the defendant kill a human being from a deliberate and premeditated design to effect his death, or the death of another? If he did, he is guilty of murder in its first degree. Now, probably the best definition of murder in its first degree under our present law will be found in the opinions of *Leighton against The People* and in *The People against Majone*.

In the first case, Judge Danforth said:

"If the killing is not the instant effect of "impulse, if there is hesitation or doubt to overcome, "a choice made as the result of thought, however short "the struggle between the intention and the act, it is "sufficient to characterize the crime as deliberate and "premeditated murder."

In the second, Judge Earl wrote:

"Under the Statute, there must be not only an "intention to kill, but there must also be a deliberate "and premeditated design to kill. Such design must "precede the killing by some appreciable space of time. "But the time need not be long. It must be sufficient "for some reflection and consideration upon the matter, "for a choice to kill or not to kill, and for the "formation of a definite purpose to kill, and, when the "time is sufficient for this, it matters not how brief "it is. The human mind acts with celerity, which "it is sometimes impossible to measure, and whether a "deliberate and premeditated design to kill was formed "must be determined from all the circumstances of the "case."

Now, do you believe that the person who fired this shot, who drew the pistol, who aimed the pistol, who then, from his own mind, telegraphed to the tip of his finger to pull that trigger, did it unconsciously, or

do you believe that he did it with a design premeditated and deliberated, from a choice to kill or not to kill?

If you believe that, then, gentlemen, I have read you the law as laid down by the Court of Appeals, and it is for you to say whether those acts and those facts constitute murder in its first degree.

If not murder in its first degree, it may be murder in its second degree.

Now, the distinction between murder in its first and its second degrees is dependent upon whether or not the design was premeditated and deliberated.

If there was a design to kill, but without deliberation and premeditation, there was murder in its second degree; and if there was no design the crime was, if crime there was, manslaughter in its first degree, for homicide is manslaughter in its first degree when committed without a design to effect death, in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

The defendant denies that he did shoot the deceased, and asserts that at the time and place in question he was elsewhere. He offers evidence tending to prove what in law is termed an alibi.

Now, it is obvious, isn't it, that if the defendant was not there at all he could not have fired the shot

in question, and could not have killed the deceased? And if he was not present at the time, and if he did not fire the shot, there is only one thing to do, and that is to acquit him.

Now, gentlemen, in a brief and homely way, but, I hope, in a very easily-understood way, I have brought to your attention the law that applies to this case.

Take the evidence, use your own good common sense, and determine it. Say, under oath, whether the evidence proves beyond any reasonable doubt the guilt of the defendant. If it does, convict, and if it does not, acquit him.

MR. HAROWITZ: I ask your Honor to charge the Jury that an indictment in a criminal case is a mere charge, and does not presume anything against the defendant.

THE COURT: I have already said it. I repeat it.

MR. HAROWITZ: I ask your Honor to charge the Jury that the burden of proof throughout the entire case is upon the prosecution.

THE COURT: Well, yes, if you want that.

MR. HAROWITZ: And that the defendant is at no time called upon to prove his innocence.

THE COURT: Well, haven't I said all that already? I told them it was the duty of The People to prove his

guilt and prove it beyond a reasonable doubt. Isn't that sufficient?

MR. HAROWITZ: I ask your Honor to charge the Jury as I read it.

THE COURT: Yes.

MR. HAROWITZ: I ask your Honor to charge the Jury that if the Jury believe a witness wilfully lied as to any material fact, that they have a right to disregard his entire testimony.

MR. WASSERVOGEL: That applies to the witnesses on both sides, your Honor?

THE COURT: That is a statement, gentlemen, of the civil law, not of the criminal law. You gentlemen, if you find reason to reject testimony, may reject it; you may believe what you think worthy of belief, and reject that which you think unworthy of belief. Such is the law.

MR. HAROWITZ: I ask your Honor to charge the Jury that in considering the testimony of Eddie Larkin, the witness for the prosecution, the Jury have a right to consider that he was a brother of the deceased.

THE COURT: Well, gentlemen, whatever is in evidence you have the right to consider, and that applies to every witness.

MR. HAROWITZ: I as your Honor to charge the

Jury that on the question of intent, covering murder in the first and murder in the second degree, as to whether the defendant had an intent to kill, the Jury have a right, and it is proper for the Jury to consider in connection with the guilt or innocence of the defendant, what motive he may have had to kill the deceased.

THE COURT: Oh, yes, you will consider all the evidence, gentlemen.

MR. HAROWITZ: I ask your Honor to charge the Jury that if the Jury find that the pistol found on the defendant at the time of his arrest, a year and nine months after the alleged commission of the crime, was not the pistol used in the killing of Joe Madden, or if they have a reasonable doubt as to whether it was the pistol used, they must disregard it entirely in connection with the guilt or innocence of this defendant in this case.

THE COURT: Yes.

MR. HAROWITZ: I ask your Honor to further charge the Jury that the pistol was only introduced for the purpose of showing or proving to the Jury that it was used in the killing of Joe Madden, but not for the purpose of proving that, because the defendant had a pistol in his possession at the time of his arrest, on July

31st, 1913, that he must have been connected with the killing of Joe Madden on December 10th, 1911.

THE COURT: I so charge, as requested.

MR. HAROWITZ: I ask your Honor to further charge that the Jury have no right to consider the fact that the defendant committed a crime in July, 1913, by having in his possession a pistol without a license, as bearing on his guilt or innocence of the crime charged against him in this indictment.

THE COURT: I so charge.

MR. HAROWITZ: I ask your Honor to further charge that if the Jury have a reasonable doubt as to whether the deceased died as a result of a bullet wound received at the hands of the defendant, they must acquit.

THE COURT: Yes.

MR. HAROWITZ: I ask your Honor to further charge that before the Jury can convict this defendant they must find that Joseph Madden died as a result of a bullet wound fired by the defendant.

THE COURT: Yes.

MR. HAROWITZ: I ask your Honor to further charge that the fact that the defendant did not testify as a witness in his own behalf is no presumption against him.

THE COURT: Yes.

MR. HAROWITZ: I ask your Honor to further charge

that if the Jury entertain a reasonable doubt as to whether the defendant's alibi has been clearly proven, they must acquit him.

THE COURT: Give the defendant the benefit of that reasonable doubt.

MR. HAROWITZ: I ask your Honor to charge it in the language I requested.

THE COURT: Read that again. Perhaps I did not correctly hear it.

MR. HAROWITZ: May the Stenographer read it?

THE COURT: No, you have got it there. You read it.

MR. HAROWITZ: I did not read it as I have it here. I ask your Honor to charge that if the Jury entertain a reasonable doubt as to whether the defendant has clearly established his alibi they must acquit.

THE COURT: If you entertain a reasonable doubt as to whether or not the defendant was there, gentlemen, a reasonable doubt, give the defendant the benefit of that reasonable doubt. That is all there is to it. You are to resolve all reasonable doubts in favor of the defendant. That is the duty of the defendant, when he claims he was somewhere else, to prove that he was somewhere else. Now, whatever reasonable doubt arises in the proof of that, or any other question, will

be resolved in favor of the defendant.

MR. HAROWITZ: I ask your Honor to further charge that where the District Attorney has a witness under subpoena, such as is in evidence here, that one Gardner was subpoenaed by the District Attorney, and not called, that the Jury have a right to presume that that witness's testimony would be damaging to The People's case.

MR. WASSERVOGEL: There is absolutely no proof of that.

THE COURT: I don't know of any proof which justifies any such charge. I don't know of any such proof. If there is such proof, you may bring just my attention.

MR. HAROWITZ: I respectfully except.

THE COURT: Now, gentlemen, you may retire.

(The Jury then retired, at 11:30 A. M.)

(The Jury returned to the Court room at 12:18 P. M.)

(The Clerk calls the roll of Jurors.)

THE CLERK OF THE COURT: Gentlemen of the Jury, have you agreed upon a verdict?

THE FOREMAN OF THE JURY: We have.

THE CLERK OF THE COURT: The Jury will please rise. The defendant will rise, Jurors, look upon the defendant. Defendant, look upon the Jurors. How say you, gentlemen of the Jury? Do you find the de-

fendant at the bar guilty, or not guilty?

THE FOREMAN OF THE JURY: We find Defendant not guilty.

THE CLERK: Gentlemen of the Jury, harken unto your verdict as it stands recorded. You say you find the defendant not guilty, and so say you all.

MR. WASSERVOGEL: With your Honor's permission, I would like to direct these Officers to take the defendant into custody on another charge.

THE COURT: Well, I have nothing to do with that. The defendant being before the Court, and being acquitted so far as this charge is concerned, I discharge him. I have nothing further to do with this case. If there is another charge, he may be remanded to await the other charge.

Amos G. Russell,
Official Stenographer.