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THE PEOPLE VS. HENRY GOLDBERG

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

THE PEOPLE

vs.

HENRY GOLDBERG impleaded with IZZY PRESSER

Before: HON. JOS. F. MULQUEEN, and a Jury.

New York, August 5th, etc., 1915.

Indicted for murder in the first degree: Indictment filed May 11th, 1915.

Appearances:

ASSISTANT DISTRICT ATTORNEY W. H. L. EDWARDS, FOR THE PEOPLE.

MESSRS. FREDERICK A. WARE and FREDERICK R. STODDARD, FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard, Official Stenographer.

New York, August 5th, 1915.

(A jury was empaneled and sworn.)

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Friday morning, August 6th, 1915, at 10:30 o'clock).

TRIAL RESUMED.

New York, August 6th, 1915.

OPENING ADDRESS FOR THE PEOPLE of ASSISTANT DISTRICT ATTORNEY W. R. L. EDWARDS.

May it please your Honor:

Mr. Foreman and gentlemen:

As you already know, this defendant is charged with the crime of murder in its first degree. He is charged jointly with a man by the name of Izzy Presser. They are charged with acting together in committing this crime.

Under our law, we cannot try two defendants together, unless they are willing to be tried. If they demand a separate trial, as a matter of course, they get it. It was my desire to try the Presser case first, if I had to elect between the two, but Mr. Horowitz is a member of the Constitutional Convention, and they are in session six days a week now, and, therefore, we could not force him to trial, and, therefore, I have had to try the Goldberg case first.

THE LAW requires that we prove in a homicide case two branches of the case; first, what we term the corpus delicti, and that must be proved by direct evidence, that is, the death, that the person is dead, and the cause of death, and that we will prove to you by a police officer who found the man's body, by the Coroner's Physician who performed an autopsy upon the body, and extracted from it three pistol bullets. He will tell you where those bullets entered, two of them in the head and one in the body, and will describe to you the course of the bullets, and the effect which they caused, and he will state to you the cause of the man's death. He will state to you, I believe, that either one of the shots was a fatal shot; that either one of them would have produced the man's death.

Now, the second branch of the case is that the violence which caused the deceased's death was violence in which this defendant took a part, and that part of the case, under the law, must be proved beyond a reasonable doubt.

I think we will be able to show you here that the deceased, Morris Rubenstein, a man by the name of Joseph Berger, a man by the name of Barney Ginsberg, also called Barney Louis, Izzy Presser and this defendant, Goldman, belonged to the same crowd on the East Side. They all knew each other, and for a considerable period of time, were all friendly. It will, I think, develop in the course of the trial that, between November and February of last year, Izzy Presser was in

the City Prison, awaiting trial. It will develop that Rubenstein---and I want to say right here that Rubenstein was no saint, Rubenstein had a criminal record, just as come witnesses on both sides of the case, as I understand it, have criminal records, and just as the defendant has a criminal record, as his counsel has told you as he selected you as jurors---during that time, from November to February, there were certain---and I don't want to state this part of the case very definitely, because it is not perfectly clear in my own mind how much of the evidence which I shall offer on this phase of the case will be received by the Court---but I think I can safely say this, that it will develop that, while Presser was in the City Prison, certain grounds of controversy arose between him and Rubenstein, whose name was Morris, and who was called "Moiche".

It will develop that after Izzy Presser got out of the City Prison, he had one or two meetings with Rubenstein, and that he told Rubenstein that he was a "rat", and a "squeeler", and ought to be treated accordingly.

It will also develop that Berger was a close friend of Presser's and Goldberg's, and that he was friendly with Presser in his controversies with Rubenstein.

Now, on the day when this shooting of Rubenstein occurred---I think it was the same day, but it may have been the afternoon before, but it is my recollection that it was the same day---March 11th, 1915, Rubenstein took a knife, and slashed Joe Ber-

ger's face. When Berger takes the stand, you will see the scar, and you can form your own idea of how serious a out it was.

Immediately after that, Berger and the man who was with him at the time it happened, after Berger had had his head treated by a doctor, the cut sewed up and the head bandaged, reported to Presser what Rubenstein had done. And Berger, by the way, as I recollect, refused to make any complaint to the Police about that assault.

Presser then said that he would fix Rubenstein for that, in connection with the other things that he had done, and said to Berger that Berger was responsible for his own injury, because Berger had urged him not to make away with Rubenstein before. He told Berger that he was going to get Rubenstein, and Berger said to him, "Don't do that. I don't want you to, to begin with, and, secondly, if you do, I will be the first person that the Police will arrest, because they will suspect, though I haven't told them, that he is the man who cut me, this afternoon."

Berger did not go home, that night, he went to a friend's house, and the house of a friend who was not only Berger's friend, but Presser's and Goldberg's friend, and he spent the night there.

In the mean time, Presser told Berger that he would not do anything to Rubenstein immediately.

After leaving Berger, that afternoon, Presser and Goid-

berg together wept up to a house which Rubenstein was known to frequent, and asked if Rubenstein had been there or was there, and were told no, that he was not there. Presser said he was looking for him.

He then went out, and along between nine and ten o'clock in the evening, the person to whose house he had come, went out on to Alien Street---it was in front of 185 Allen Street that this killing occurred---and, as she was going to a store right in the neighborhood for something, she saw Rubenstein and Goldberg and Presser together, coming along the street.

She saw Goldberg pull a pistol, and fire at Rubenstein. She saw Rubenstein drop on to the sidewalk. She saw Rubenstein struggle up to his knees, and put up his hands, and say, "That's enough, boys."

Then she saw Presser fire the second shot and saw Rubenstein drop to the ground, and saw Presser lean over and fire the last shot into his head.

You will find that one shot is in the body, and one shot is in the head, and one shot is in the neck.

Now, just as he had anticipated, Berger was the first man arrested in this case. The Police went right out and arrested Berger, whom Rubenstein had cut, that afternoon, and Berger was placed in the City Prison; and this defendant was next arrested; it was some time later, along in May.

Presser was finally arrested down in Bayonne, New Jersey,

by the New Jersey Police, and extradited and brought back to New York.

Now, we have in this State several degrees of homicide. The Court, of course, will instruct you gentlemen in the law, but it is almost always necessary in a case of this character to have in mind the different degrees of homicide as you listen to the proof in the whole case, so that you may appreciate the effect of the evidence as it is given.

Now, there are two general subdivisions of homicide, murder and manslaughter. The distinction between the two subdivisions lies in the existence or non-existence of an intent or design to kill. In both degrees of murder that is required; in neither degree of manslaughter does it exist.

First degree murder is killing with a design to kill, after premeditation and deliberation upon that design.

Murder in the second degree is killing with a design to kill, but without premeditation and deliberation.

The two degrees of manslaughter are killing in the heat of passion, without a design to kill.

Now, it is going to be my contention here before you that the proof in this case clearly shows that Presser and Goldberg shot and killed Rubenstein, not only with a design to kill, but with a design which was premeditated and deliberated upon. That, I will claim, is conclusively shown by the talks which were had with Presser, in Goldberg's presence, by their going to look for

Rubenstein on the same afternoon, before they shot him, and by the fact that they were both armed with revolvers when seen with him on the street, and that both of them fired a revolver shot, at least one---this defendant firing one and the other defendant firing two---into vital portions of the body of the deceased man.

Now, of course, I have told you right here in my opening that the deceased was a man of bad character. That, of course, does not affect one iota the degree of crime in this case, if a crime was committed. A man of bad character is just as much entitled to the protection of the law as a man of good character, No individual citizen has any right to go out and kill a man, because he is. a man of bad character, no matter how bad his character is. The law provides a method for punishing a bad man, if he commits a criminal act, without recourse to the individual action of some one who has a grievance against him.

So that, as far as that is concerned, I cannot see any possible relevancy of the deceased's character, unless the defense seeks to prove that their act was done in self defense.

## THE PEOPLE'S TESTIMONY.

JONE McALLISTER, M. D., of 43 West 48th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. EDWARDS:

Q Dr. McAllister, you are a practicing physician and surgeon duly licensed in this State?

A Yes, sir.

Q And you have been for how many years?

A Since 1879.

Q During that time, doctor, and for several years past, you have acted as Coroner's Physician, have you not?

A I have.

Q Do you recollect performing an autopsy on the 12th of March, 1915, on the body of one Morris Rubenstein?

A I do.

Q Is this paper which I now hand you your notes of that autopsy?

A Yes, sir.

Q Where was that autopsy performed?

A That autopsy was held at the Morgue.

Q And about what hour of the day?

A That autopsy was held probably around eleven or twelve o'clock.

Q Now, doctor, can you tell the jury briefly what experience you have had in the performance of autopsies?

A I have been at the Morgue since about 1895, with the exception of two or three years when I went back to Europe, and I have seen, participated in and held probably every post mortem that has been held in the Morgue.

Q And you have performed a number yourself?

A Yes, an

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immense number.

Q As I recollect it, about two hundred a year, for several years?

A Yes, sir; probably more.

Q Now, will you tell us what the condition of the body---or, first, tell us who identified the body to you as that of Morris Rubenstein?

A I can read this, can I?

Q Yes?

A Officer Sheehy, who is in the anteroom now.

Q That is, Officer Sheehy, of the 15th Precinct, as I recollect it?

A Yes, sir; of the 15th Precinct.

Q Now, Doctor, will you tell us what the condition of this body was as you observed it before you began the autopsy proper.

A Can I read these notes?

Q You may look at them to refresh your recollection.

BY THE COURT:

Q First, you may state the location of the Morgue?

A The Morgue is located at 29th Street and First Avenue.

Q Well, go on now.

A On examination---when I go into the Morgue, the first thing I do is to take a list of the cadavers, and amongst them was this Morris Rubenstein, and then I went downstairs, and inspected the body, and I ordered it to the autopsy table, seeing that an autopsy was necessary; and, after being put on the table---it was already undressed and in the box---I found him to be a well built man, of about twenty one years, gray eyes, good teeth---on examination I found three bullets, three bullet wounds, and I found three bullets.

BY MR. EDWARDS:

Q First, you say you found three bullet wounds?

A Yes, sir, in the head and body.

Q Did you find external evidences on the body of those wounds?

A Yes.

Q What did you find?

A I found three bullet wounds, the points of entrance and exit.

Q Where were they, doctor?

A One bullet was found in the back of the neck, more to the left side, between the sixth and seventh cervicle vertebrae, right about here. (Indicating).

The bullet was found deep down in the carotid artery, where I removed it, down here, (indicating) The carotid artery runs up from the heart, up the side here (Indicating) and it had nicked a little bit of it away. That bullet is here (Indicating).

THE COURT: Do you wish to have that marked for identification while he has it?

MR. EDWARDS: Yes, sir; as soon as he picks out that one. There are three here.

THE WITNESS: This one. (Indicating).

BY MR. EDWARDS:

Q The one that you now hand me, that is the bullet that you extracted, as you have described?

A Yes, sir.

Q And can you tell us, if you know, doctor, what this substance on it is?

A A little bit of cloth.

Q And that is just as you found it?

A Yes, sir.

(It is marked People's Exhibit 1 for Identification.)

A (Answer continued) Bullet Number 2 was found one inch above and one inch in front of the left ear (Indicating) passing through the skull, shattering the middle fossa of the skull---that is, the base---at the petrous portion of the temporal bone---that is, the hard part of the temporal bone, where the organ of hearing is situated.

BY THE COURT:

Q Over what ear did you say that was, Doctor?

A The left ear.

Q An inch above, you said?

A Yes, sir. One inch above and one inch in front, passing through the skull, breaking the skull, on the right side, and was removed from under the skin by a small incision. BY MR. EDWARDS:

Q Now, can you give us an idea of about where that was on the right side when you took it out?

A Just about here. (Indicating), practically above and in front of the ear.

Q Would it be correct to say that it went slightly from front to rear?

A Yes, it would. And it shattered the base of the skull. That is the bullet (Indicating).

Q This bullet which you now hand me?

A Yes, sir.

MR. EDWARDS: I ask to have it marked for identification. (It is marked People's Exhibit 2 for identification).

BY MR. EDWARDS:

Q And that bullet is in the same condition as it was when

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you removed it?

A Yes, sir.

Q Now, doctor, how about the third one?

A Bullet Number

3 was found five and three quarter inches below the left nipple, and four and a half inches from the sternum.

(Indicating).

It was found right about here. (Indicating).

BY THE COURT:

Q And how many inches from the sternum?

A Four and a half inches from the middle of the sternum.

BY MR. EDWARDS:

Q And five and three quarters inches below the left nipple?

A Yes, sir. It entered between the seventh and eighth costal cartilage.

Q That is the cartilage below the ribs?

A. Yes, that fastens on the ribs. Went through the diaphragm---that is, the large partition which separates the chest and abdomen---entered and passed through the stomach, entered and passed through the first lumbar vertebra, shattered the left side of it, and was removed by an incision over the first lumbar vertebra.

Q Now, doctor, can you indicate on the officer here (Indicating the crier of the Court) about the point where that entered, in front, first? Give us the point of entrance first, if you will?

A It entered about here. (Indicating)

Q Where I have my pencil now? (Indicating)

A Yes, and it ranged downward towards the first lumbar vertebra, and was taken out about here. (Indicating) This was removed by a skin

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incision.

Q Now, have you got that bullet, doctor?

A Yes, sir.

Q This one which you now hand me?

A Yes, sir.

Q And it is in the same condition as when you received it?

A Absolutely.

(It is marked People's Exhibit 3 for Identification).

THE WITNESS: I then---

BY MR. EDWARDS:

Q Just one moment, Doctor.

A I then started a post mortem. I removed the calvareum, out the skin on the top of the skull, and shoved it back and front, and sawed off the skull cap. I found the first bullet had smashed the brain and caused a large hemorrhage, due to laceration of the blood vessels of the brain.

Q Was that the first or second bullet, doctor?

A That was the first bullet.

Q I thought the first bullet was in the neck.

A I am talking now of the bullet that was in the head, the second one, above the ear.

Q Of course, your numbering of them is only for convenience.

A Yes. I just marked them as I took them out.

THE COURT: Then you had better say "the bullet that entered above theear."

A Yes, sir.\_

Q And it shattered the brain, you say?

A Yes, sir; rup-

turing the blood vessels, and causing a large hemorrhage, which caused his death.

The heart and lungs were normal. The spleen and pancreas and right kidney were normal. There was a large ecchymosis, or large blood clot, occupying the left lumbar region, that is, the region of the kidney.

BY MR. EDWARDS:

Q Was that where you found the third bullet that entered the body?

A Yes. The cause of death was shock and hemorrhage, due to pistol shot wound of the skull. All the wounds were fatal.

Q That is, in your opinion, you can say with reasonable certainty that any one of those wounds would have caused death?

A Any one of those wounds would have killed him.

Q Can you tell us approximately how tall this man was, Doctor?

A I have forgotten that now, how tall he was. I should say he was a medium sized man. I have forgotten that in the multiplicity of my work.

Q You made no note on that?

A No, I did not.

MR. EDWARDS: You may examine.

CROSS EXAMINATION BY MR. WARE:

Q Doctor, of course, there is no means of your telling which would be inflicted first?

A Not the slightest.

Q But either one of the three was fatal?

A Absolutely fatal.

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Q And two of those wounds were in the head?

A Head and neck.

Q Did the wound in the neck sever the spinal cord, or touch it?

A No, it ruptured the carotid artery.

Q Wouldn't either one of the wounds in the head have caused mental paralysis? In other words, wouldn't a person who received such wounds become unconscious immediately?

A If he got hit in the head first, yes.

BY MR. EDWARDS:

Q How about the wound in the neck?

A I am answering his question now. Just one at a time. The wound in the neck would cause him to bleed to death in probable three to five minutes. It went through the vertebra and did not touch the spinal cord.

BY MR. WARE:

Q Well, would it be possible to sever the vertebra without paralyzing the brain?

A Without paralyzing the brain?

Q Yes?

A The moment you touched the spinal cord in that vicinity, it would have been sudden or instantaneous death.

Q Well, did I understand you to say that the bullet wound in the neck severed one of the spinal vertebrae?

A No, it went between the sixth and seventh. As I remember it, it didn't go into the body of the vertebrae. It went between them. There is an alley or wings. The seventh is known as the spinal prominent, from its length. It didn't go in that way. It went obliquely over, and caught, the carotid artery just about the

side of the vertebrae.

Q Well, don't the vertebrae enclose the spinal cord?

A Only the center. There is a passageway in the center. There is the body, seven processes, and there is the laminae, and the body itself is that size (Illustrating). And it didn't go near the spinal cord; it went at the side of it, ranged in between the two, and then hit the carotid artery. If it had gone directly through, it could not have hit the carotid artery, because it is on the side of the vertebrae. It went through those little parts at the side.

BY THE COURT:

Q It did not hit the spinal cord at all, but it hit the vertebrae?

A Yes, it went through the wings.

BY MR. WARE:

Q Well, if it went between them, it did not hit the vertebrae?

THE WITNESS: Well, your Honor, to understand and answer that question, you must understand a little anatomy.

BY THE COURT:

Q You have answered that question as well as you can?

A Yes, sir.

BY MR. WARE:

Q Well, what about the wound in the heart; would that have caused instant death?

A That would not have caused instant death.

Q Well, when you say "instant death", would a person with a bullet through his heart be able to perform conscious acts?

A We have had a man who lived one hour with a bullet through the heart, and we have had them live various times, as shown by the hospital records. A bullet wound through the heart doesn't mean instantaneous death. It may occur in five minutes, or, as we have records, an hour after.

Q But a bullet through the heart would immediately cause hemorrhage, wouldn't it?

A If the wound stayed open, yes, but, owing to the contract ability of the muscle, as we have found out at the morgue, some men have lived for a long time.

Q Did you find anything of that kind occurred in regard to the heart in the case of Rubenstein?

A Can I look at my notes again?

Q Yes, Certainly.

A At no stage of this paper, does it show that it went through the heart. It says the second or third bullet went through the middle of the sternum---was found five and three quarter inches below the nipple and four and a half inches from the middle of the sternum. That is not in the region of the heart. It entered between the seventh and eighth costal cartilages. The cost cartilages are fastened to the ribs, and right here begins the seventh, down here. (Indicating) Went through the diaphragm---that is, the fleshy partition here (Indicating)---and the bullet went through that convexity.

Q Well, I am interested only in knowing whether or not it went through the heart?

A It didn't go through the heart.

Q Well, didn't you remember that, outside of reading your notations?

A My dear friend, I have so many post mortems, that I can't keep posted, without refreshing my recollection.

BY THE COURT:

Q How many autopsies have you had, doctor, since this autopsy?

A A great many. I have had five, yesterday.

BY MR. WARE:

Q Now, the bullet that went through the skull, of course there could be no post mortem act on the part of the deceased--in other words after he was dead he lay there, didn't he?

A Undoubtedly.

MR. WARE: That's all.

MR. EDWARDS: That's all, doctor.

MARTIN SHEEHY, of the 15th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS:

Q Now, Mr. Sheehy, you are an officer of the Municipal Police Force, are you not?

A Yes, sir.

Q And have been for how long?

A Since 1913.

Q And you are now attached to the 15th Precinct?

A Yes, sir.

Q Were you in the same precinct on the 11th day of March?

A Yes, sir.

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Q You. know the location of Allen Street, do you not?

A Yes, sir.

Q That entire street is in the County of New York, is it not?

A Yes, sir.

Q Now, officer, on the evening of the 11th of March last where were you?

A T was on post on Stanton Street, from Allen Street to the Bowery.

Q On Stanton?

A Yes, sir.

Q Did anything occur on Allen Street that evening that attracted your attention?

A Yes, sir.

Q What was it? AI had an ambulance case at 235 Eldridge Street, and as the doctor was attending to this injured man, some citizen come up and told me---

Q No. Don't tell me what he said. He said something to you?

A He said---

Q No. You can't tell that. He said something to you?

A Yes sir.

Q And after he had said something to you what did you do?

A I left the injured man, living at 335 Eldridge Street and ran to 185 Allen Street, and I found the deceased, Morris Rubenstein, laying on the sidewalk in front of 185 Allen Street, and there was a large crowd of people around the body when I got there\*\*\*

Q Well, what did you do?

A Well, the doctor that I had in the case at 235 Eldridge Street came around with the ambulance, right after me, and pronounced him dead.

BY THE COURT:

Q What time was this?

A About 9:45 P.M.

Q About 9:45 P.M.?

A Yes, sir.

Q Did you make a note of it in your book?

A Yes, sir.

BY MR. EDWARDS:

Q About a quarter before ten that evening?

A Yes, sir.

Q And, officer, did you observe the condition of this dead man's body?

A Yes, sir.

Q Any marks on it?

A Yes, sir.

Q Where?

A Right here. (Indicating the temple and over the ear.)

Q And was there any blood visible?

A Yes, all over his face.

Q What did you do with his body?

A I took the report to the Station House and left the body in charge of Officer Bauer.

Q At the spot?

A Yes; and the body come into the station house about an hour afterwards.

Q They sent the patrol wagon for it, I suppose?

A Yes, sir.

Q And did you see the body again after that?

A Yes, sir.

Q Where?

A Up at the Morgue.

Q Did you see Dr. McAllister there?

A Yes, sir.

Q Did you see any part of the autopsy?

A I identified the body, opposite Dr. McAllister.

Q And that body which you saw at the morgue with Dr. McAllister was the same body which you found at 185 Allen Street?

A Yes, sir.

BY THE COURT:

Q Did you see the body come into the station house, tool?

A Yes, sir.

MR. EDWARDS: That is all.

CROSS EXAMINATION BY MR. WARE:

Q Officer, when you got there, do you know how long the body had been lying there?

A Well, about a minute.

Q Well, how do you know that?

A At the time that I was told about it, this fellow that ran around and told me, I ran right around to 185 Allen Street.

Q How far did you have to go?

A About a block and a half.

Q Did you hear any pistol shots?

A No, sir.

Q How was the body taken to the station house, or was it taken to the station house?

A It was taken to the Fifth Street Police Station in the Patrol Wagon.

Q In the patrol wagon?

A Yes, sir.

Q And how long afterwards, was it that the patrol wagon got there?

A Well, I should say about an hour afterwards.

BY THE COURT:

Q Well, you were not there when the patrol wagon got there, were you?

A No, sir. I went back to the station house to report, and left the body in charge of Officer Bauer, and the body came to the station house about an hour afterwards.

BY MR. WARE:

Q Now, I understood you to say, in answer to the District Attorney, that, when you came up there, and saw the body the first time, that there was a wound here and here (Indicating).

A There was wounds on the temple and it was full of blood.

Q Well, was there more than one wound on the temple?

A Well, now, I couldn't say.

BY THE COURT:

Q You did not examine the body carefully, did you?

A No, sir.

Q You just saw it there?

A Yes, sir. I just stooped down, and there was blood on the face.

Q And the doctor who was there pronounced him dead?

A Yes, sir; Dr. Miles, of Gouverneur Hospital pronounced him dead.

BY MR. WARE:

Q Was there a crowd there?

A Yes, sir.

Q Did you recognize any of the crowd?

A Yes, sir; and I took two witnesses, two material witnesses, to the station house.

Q Well, who were the witnesses that you took to the station house, officer?

A The witnesses were Harry Schubert, of 61 East 3rd Street, and Lizzie Gutterman, of 61 East 3rd Street, also.

Q And who else?

A Lizzie Gutterman, of 61 East 3rd Street.

Q Well, when you say two witnesses, you don't know whether

they were witnesses or not?

A Well, they told me they were.

THE COURT: Well, why do you ask him that question, Mr. Ware? He says he was told of the shooting and ran around there. He did not say that he saw the shooting, or knew anything about it, and he took the people that he thought were witnesses to the station house. That is all that testimony means. Why waste time on that?

BY MR. WARE:

Q Well, you don't know whether they were witnesses or not?

A Well, Harry Schubert told me he was close by.

Q Never mind what he told you.

BY THE COURT:

Q You acted on information that you gathered at the place?

A Yes, sir.

BY MR. WARE:

Q Do you recollect anybody else that you saw in the crowd at the time you got there?

A No, sir.

Q Did you make any effort to get any other names of people who were in the crowd at the time you arrived?

A Yes, sir.

Q Did you succeed?

A No.

Q You are familiar with that neighborhood, are you not?

A Yes, sir.

BY THE COURT:

Q Was this on your post, officer?

A Yes, sir.

BY MR. WARE:

Q Was that on your post?

A Yes, sir; it was on my post. I had Stanton Street, and I take in half a block either side.

Q How long had you been on that post?

A I have been on that post since 1913.

Q What date, about?

A It must be about December, 1913.

Q 1913?

A Yes, sir.

Q Please talk a little more distinctly, officer. I can't understand you.

THE COURT: Now, the officer is talking very distinctly.

MR. WARE: Well, I can't understand him. I thought he said 1915.

BY MR. WARE:

Q Therefore you are pretty familiar with the people who live in that neighborhood, axe you not?

A Yes, sir.

Q And there must have been sever an hundred people in the crowd at the time you got there, were there not?

A Yes, sir.

Q In all those several hundred people you recognized none that you knew?

A Yes, there were several there.

Q Now, tell us who they were?

A Well, I can't just remember them now.

BY THE COURT:

Q You made no note of them because you thought that they knew nothing about the case, is that it?

A Yes, sir.

THE COURT: Now, the officer's statement is very clear, My. Ware.

MR. WARE: This is a very serious case for the defendant, your Honor, and we want to try and learn what the officer did and didn't do.

THE COURT: Well, he has told you.

BY MR. WARE:

Q Now, officer, do you know Mrs. Blank?

A Yes.

Q You have known her a long time, haven't you?

A Yes, sir.

Q And she is one of the witnesses in this case?

A I don't know.

BY THE COURT:

Q Well, do you know whether she is a witness or not?

A I don't know.

THE COURT: The District Attorney has charge of the witnesses not the office.

BY MR. WARE:

Q And do you know the Banks?

A I just know them, that's all.

Q Do you know Joe Berger?

A Yes, I know Joe Berger.

Q Are you friendly with him?

A No, sir; not friendly with anybody.

Q Did you talk to Mrs. Blank when you saw her there? I withdraw that. Did you see Mrs. Blank in the crowd when you arrived there that evening?

A No, but she could be there, and I might not see her. There was a big crowd.

Q But you didn't see her?

A No, sir.

Q And, of course, then you didn't speak to her?

A No, sir.

Q Did you speak to her at all about the case, that evening?

A No, sir.

Q Or she to you?

A No, sir.

Q Did anybody else speak to you about the case, that evening there, at the time you arrived, or later?

A No, sir.

Q Do I understand you to say that you never talked to Mrs. Blank about the case?

A No, sir.

Q Haven't you ever talked to any one since that night about this case?

A Only when the case was in the Coroner's Court and before the Grand Jury, that's all I know about the case.

Q And who did you talk to there?

A I talked before the District Attorney and the Grand Jury.

Q Didn't you talk to any one who was among the witnesses there?

A No, sir.

Q Haven't you talked with any of your fellow officers about this case?

A No, sir.

Q In other words, you haven't said a word to anybody about this case since the night you arrived and saw Rubenstein lying on the ground?

A That's all, sir.

MR. EDWARDS: That is objected to. He said that he talked to the Grand Jury and the District Attorney and in the Coroner's Court.

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BY MR. WARE:

Q But with those exceptions?

A Yes.

Q But with no other officer or any person who you supposed might be a witness?

A No, sir.

MR. WARE: That's all.

RE-DIRECT EXAMINATION BY MR. EDWARDS:

Q Now, when you turned in your report at the station house do you know what detectives were assigned to the case?

A I don't know, sir.

THE COURT: Well, how is that important?

MR. EDWARDS: I just wanted to show that these cases do not remain with the patrolman, but go to the detectives.

BY MR. EDWARDS

Q Did you have anything more to do with the case after you turned in your report?

A No, sir.

MR. EDWARDS: That's all.

JOSEPH BERGER, of 325 East 120th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS:

Q Now, I want you to talk as loud as you can, Berger, because the noise in the street is hard to overcome, and you must almost shout to make the last gentleman hear you, and then all of us will hear you. You have been in the House of Detention how long?

A About eighty-seven days.

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Q And you were committed there by the Court, were you not?

A Yes, sir.

Q What did you do for a living before you went into the House of Detention in this case?

A I was in business with my father.

Q In what line?

A Delicatessen business.

Q And where?

A We had a place on the East Side for ten years, and, during the last six years, we have a summer place over in Rock away Beach.

BY THE COURT:

Q That is, you had two places in the summer, or did you shut up the East Side place in the summer, and go to Rock away Beach?

A Well, the last two. years we shut up the place on the East Side, and sold it.

Q Now, Mr. Edwards asked you what you were doing right before you went to the House of Detention?

A I was in business with my people.

BY MR. EDWARDS:

Q Where?

A On the East Side.

Q Where on the East Side?

A 187 Orchard Street, and at Rock away Beach, also.

Q Now, do you know this defendant?

A Yes, sir.

Q How long have you known him?

A Oh, quite a number of years.

Q Can you give us an idea of about how many?

A About eig\*\*\*1

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or ten years.

Q And do you know Izzy Presser?

A Yes, sir.

Q And how long have you known him?

A Since last September.

Q And did you know Morris Rubenstein?

A Yes.

Q And how long had you known him?

A Since last October.

Q And Barney Ginsberg, did you know him?

A Yes, sir.

Q How long had you known him?

A About two years.

Q Now, did all of you young men live in the same neighborhood?

A Yes, sir.

Q Whereabouts?

A Around the East Side, on Endridge Street.

Q And you lived there up to what time?

A I lived there until about last year, the summer of last year.

Q And then where did you move to?

A We moved to Harlem.

Q And did all these other men, Presser, Goldberg, Rubenstein and the others, remain on the East Side?

A Yes, we all hung out together on Eldridge Street.

Q But last summer you and your family moved up to Harlem to live?

A Yes, sir.

Q And where was your home at the time you were committed in this case?

A 335 East 120th Street.

Q And who did you live with there?

A My parents.

Q Now, did you go to Public School here in New York?

A Yes, sir.

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Q For how many years?

A I graduated from Public School. Until the graduating class in the public school.

Q Yes. And what age were you then? How old were you when you graduated?

A About fourteen and a half years.

Q And how old are you now?

A Twenty-two. I'll be twenty-two the twentieth of this month.

Q Now, have you ever been convicted of any crime?

A Never.

Q Do you remember the 11th day of March, 1915?

A I do.

Q The 11th of last March?

A I do.

Q Did you see Rubenstein, that day?

A I did.

Q When was the last time you saw him on that day?

A Around between three and three thirty P:M.

Q And where?

A On the corner of Eldridge and Stanton Street.

Q Who was with you?

A A fellow by the name of Barney Lewis, and a fellow they call Lela.

Q Has Barney Lewis any other name?

A We know him as Barney Lewis, but his right name is Barney Gineberg.

Q And when you speak of Barney Lewis, you refer to the same man as Barney Ginsberg?

A Yes, sir.

Q And was any one with Rubenstein when you met him that time?

A No, sir.

Q He was alone?

A Yes, sir.

Q Well, were you talking to Rubenstein then?

A No, sir.

Q Well, just tell us what happened at that time?

A Barney Lewis and I come down from the Turkish Bath. We slept there the night before last.

At First Avenue and First Street---we had dinner at Houston Street, and we come down to Eldridge and Stanton.

At that time we were supposed to run a racket for a fellow named Sam Ripetein, and we met this "Lela" and he is a hacker, he has his own automobile, and rents it out.

Q Now, don't tell what was said there, but what was done.

A We were standing on the corner, the three of us, when somebody came running from the back, and struck me, and I turned and saw the deceased running away.

Q Do you mean Rutenstein by the deceased?

A Yes, sir.

And I saw that I was cut.

Q And is that scar on your right cheek the scar of the cut that you got then?

A Yes, sir.

Q Turn around and let the jury see it. Now, what did you do after that?

A After that Barney Lewis took me into the drug store, right on the corner.

Q Do you go to a doctor and have it fixed up?

A Yes, the doctor lives two houses north of the drug store, and he took me up there.

Q And was your head bandaged up, your face and head, were they?

A Yes, sir; my face was bandaged.

Q Well, then, what did you do after that?

A Why, after

that we come down, and. I was---after the stitches were put in, we went up to a barber shop, at 208 Eldridge Street.

Q Whose shop is that?

A There is two partners, by the name of Harry Brillberg and another man---I don't remember his name.

Q Were you and Barney Lewis alone then?

A Yes. "Lela" went away.

Q And did you find any one at the barber shop?

A No, sir.

Q Did you see either Presser or Goldberg, later, that day?

A After that the defendant now come up.

Q That is, the defendant here?

A Yes, sir; Mr. Goldberg.

Q What time was that?

A About four or four thirty it was.

Q What was the name you boys called Goldberg?

A "Dutch".

Q "Dutch"?

A Yes, sir.

Q Now, where was Goldberg when you saw him after you were cut?

A Goldberg was---he came in the barber shop later.

Q And did you have any talk with him then?

A He says to me he was just in the moving pictures, and somebody told him they cut a fat fellow, on Eldridge Street, and he came out of the pictures, and come up to the barber shop, and saw I was cut.

Q And who did you say cut you?

A I said, ""Moiche" cut me."

Q That was the nick name you boys all called Rubenstein,

was it not?

A Yes, sir.

Q Now, where did you and the defendant go after that?

A Mr. Goldberg, Barney Lewis and Goldberg's brother was there. He come up, a little later after his brother.

Q What is his name?

A I don't know his name. I knew it was his brother. And the four of us went to the Winter Garden, some moving picture place on Houston and Christie Streets.

Q Yes, and who did you see there?

A We saw Moving Pictures there.

Q Did you see any one that you knew while you were there?

A No. We left word with the barber, Mr. Harry Prillberg that, in case Goldberg or "Katzy" came, to let them know we were in the moving pictures.

About six o'clock, Izzy Presser came there.

Q And this defendant was there then with you?

A Yes, sir; sitting in the pictures with me.

Q Now, what did you and Presser and Goldberg do then?

A Izzy Presser called us down.

Q That is, he sent word into the moving pictures for you to come out?

A No, he come himself and called us down. And when we come down, "Katzy" and his wife were downstairs, and Mrs. Hirshkowitz and her son Abie were downstairs, and we all walked towards Stanton Street. That was about six P.M.

Q Now, did you have any talk with Presser in the presence of the defendant at that time?

A It was about six P.M. when

we were all standing on the corner, when suddenly the deceased happened to pass, and laughed at the whole crowd of us.

Q That is, Rubenstein, you mean?

A Yes. And when he passed, so Izzy says, "There goes that cock-sucking rat now. I've got to kill him."

And Mrs. Hirschowitz says, "What are you going to do, Izzy? Think of your wife. She has got to come out of the workhouse only on Sunday."

And then she walked away, with her son.

Q That was Mrs. Hirschowitz and Abie?

A Yes, sir; and then he says to me---

Q Now, who is "He"?

A Izzy Presser says, "In one way, I'm tickled to death that you were cut, because, if it wasn't for you, I would have croaked him long ago, and you would never have been cut, to-day.

Q Well, now, where was Goldberg when that was said?

A Right there.

Q Well, now, what else was said, if anything, and what did you do?

A After that I walked up to the barber shop, as I was ashamed to stand around with that bandage on my face.

Q Yes.

A And I left the mall downstairs, they were all on the corner. I left them all.

Q Now, was your head much tied up?

A It was tied up this way and around here and here. (Illustrating).

Q What was it covered with, sticking plaster?

A Sticking

piaster here. (Indicating) But bandaged here, and I put a handkerchief around my head so that they couldn't notice the bandage.

Q Did it go over the right eye?

A Yes, sir. When I put the handkerchief over my head, it did.

Q So that you could only see with one eye?

A Yes, sir.

Q And that was your left, one?

A Yes, sir.

Q Well, now, did you see Presser again that night?

A Yes,

sir.

Q And did you see the defendant Goldberg again that night?

A Yes, sir.

Q Were they together when you saw them?

A Yes, sir.

Q When was that?

A That was about eight or eight thirty P.M. Barney Lewis and "Katzy" come up and asked me if I am going up home to sleep.

Q Where were you then?

A And I was still in the barber shop, and they come up to see if I am going to go home.

MR. WARE: I object to that as not in the presence of the defendant.

BY MR. EDWARDS:

Q Who spoke to you? Were both Presser and Goldberg there at that time?

A No, sir; not in the barber shop. I saw them in the street together, but not in the barber shop.

Q Now, who was there With you in that shop?

A With me?

Q Yes?

A The whole crowd. Mr. Goldberg, Mr. Presser, a

man by the name of Barney Pettier, "Katzy" and myself.

Q And where was Henry Goldberg? Was he there?

A Yes, sir.

Q And what did "Katzy" stand for? What is his real name?

A Herman Katz.

Q And you call him "Katzy"?

A Yes, sir.

Q Now, when you saw the defendant and Presser on the street between eight and eight thirty, was anything said?

A Yes, sir.

Q What was said?

A Izzy Presser asked me if I am going home to sleep, and I says no.

MR. WARE: I object to that, unless Goldberg was there also.

THE WITNESS: Goldberg was there at the time, too.

BY MR. EDWARDS:

Q Go on, please.

A Izzy Presser asked me if I am going home to sleep, and I told him no.

THE COURT: One minute. This testimony would not be binding on the defendant Goldberg, unless it is shown that there was a concerted plan between Goldberg and Presser to kill Rubenstein.

MR. EDWARDS: We will show that as we go on, sir.

BY MR. EDWARDS:

Q When Presser said that to you, how far from you was Goldberg?

A We were all grouped around.

THE COURT: Well, it is not admitted on that theory at all.

MR. EDWARDS: No, sir; but I want to show knowledge on the part of the defendant of this talk, which will become very material.

THE COURT: No. The defendant is responsible only for his own acts, unless it be shown that he was acting in concert with Presser.

MR. EDWARDS: And we will show that, sir.

THE COURT: And he is not responsible for any act or declaration of any one else, unless that be proved. You understand that, Mr. Ware?

MR. WARE: Yes. And it is understood that that evidence is being admitted on those conditions.

THE COURT: Yes. And it is very dangerous evidence for the People to seek to get in, because it will be reversible error, if that is not shown.

MR. EDWARDS: And I expect to show that concert of action during the case, your Honor.

BY MR. EDWARDS:

Q Now, go on, Berger.

A He asked me if I was going home to sleep, and I said "No," that my mother would fall in hysterics if she should see me in this way.

And I said to "Katzy", "You take me home to sleep with you". He had a flat on seventeenth Street, and I was to go up there with "Katzy" to sleep.

Q Well, did you go up there?

A Yes.

Q Now, before you went up, did you have any further talk

at which Goldberg was present, about Rubenstein?

A Yes, sir.

Q What was that?

A Izzy---I told Izzy Presser, "Now, don't forget, I don't want you to harm "Moiche", tonight."

MR. WARE: It is understood that this is taken under the same objection?

THE COURT: Yes.

BY MR. WARE:

Q And was Goldberg there?

THE COURT: He says that Goldberg was there, and that he said something to Presser in the presence of Goldberg. Go on.

BY THE COURT:

Q Where were you when you made the statement that you are repeating now?

A On the opposite side of the barber shop.

Q And where was Presser?

A Right there.

Q And where was Goldberg?

A Right there. We were grouped around together.

Q And was there a general talk?

A Yes, sir.

Q All right. Go on.

A And I told Izzy not to harm Moiche tonight because everybody in the neighborhood knows that I am cut, and if anything happens, the suspicion would be on me.

Q Well, now, did you say that in a loud tone or did you whisper that to Izzy?

A I can't recollect.

Q And where was the defendant at that time?

A He was right there at the time.

Q Did he say anything at all?

A No, sir.

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BY MR. EDWARDS:

Q Now, go on.

A And then he says---

BY THE COURT:

Q Who said?

A Izzy. Izzy said, "I told you before I ain't going to do nothing tonight, and, besides, 'Dutch' and I has got to go on a job uptown."

BY MR. EDWARDS:

Q You mean by that, by "Dutch", this defendant?

A Yes, sir.

Q And did the defendant, did "Dutch" say anything?

A No, sir.

Q And did you up to Katz's flat after that?

A Yes, sir.

Q And did you spend the night there?

A Yes, sir.

Q Where was that flat?

A On Seventeenth Street, west of Third Avenue, I don't know the number.

BY THE COURT:

Q And what time did you go to Katz's house?

A About 8:30 P. M.

BY MR. EDWARDS:

Q And who else was there besides you?

A "Katzy" and his wife were along with us, and Barney Pettier went up with us and left us at Second Avenue and Houston Street, while we walked over to Third Avenue and took a Third Avenue car up to 17th Street.

Q And when was it after that---did you go out again that

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evening?

A No, sir.

Q Did you go to bed there?

A Yes, sir.

Q And sleep?

A Yes, sir.

Q And when was the next time that you saw this defendant or Presser?

A About ten or ten thirty P.M.

Q That night?

A Yes.

Q Which one did you see first?

A None of the defendants. Barney Lewis came up first.

Q (Question repeated)

A I saw Lewis first, and then Presser after.

Q And when did Barney Lewis come up there?

A Around ten or ten thirty P.M.

Q And how long after he got there did Presser come there?

A About ten minutes later.

Q How long after that did you see the defendant?

A About ten minutes later, after Izzy.

Q And when the defendant came in there, did he say anything?

A The defendant now?

Q Yes, Goldberg?

A When he come in, so Izzy Presser says to him, "Why didn't you fire when I told you? Why didn't you shoot when I told you?" And he says, "I couldn't. The gun wouldn't work." So Izzy said, "Mine didn't work neither. That's why I told you to fire."

BY MR. EDWARDS:

Q Was anything more said?

A That's all that this defendant said.

Q, That is all he said?

A Yes, and all that Izzy said to him then.

Q Now, after the defendant was there, what was said further, if anything?

A After that---so Izzy come up first and "Dutch" was away, and so Izzy sent "Katzy" down to see whether "Dutch" got away or not.

MR. WARE: I object to that and move to strike it out.

THE COURT: Motion granted, strike it out.

BY MR. EDWARDS:

Q Izzy said something to Katz, before the defendant came in?

A Yes, sir.

Q And, after he said some thing to Katz, did Katz stay there?

A No, he went away.

Q And how long was he gone?

A For about half an hour. But during the time he was away, the defendant came up.

Q The defendant came in without him?

A Yes, sir.

Q And that's the time that this conversation that you have just repeated took place between Presser and this defendant?

A Yes, sir.

Q Now, was there anything else said by the defendant in this conversation in which he took part, after he got there?

A Yes, sir.

Q What was that?

A So Presser said while he was there that, in case anything happened, or in case he gets picked up---there was another couple there all the time by the name of Mr.

and Mrs. Gordon---they shared the flat with Mr. Katz and his wife---and he said to this Mrs. Gordon---

BY THE COURT:

Q Who said that?

A Presser.

BY MR. EDWARDS:

Q And was the defendant there then?

A Yes, sir. And he said, "In case he gets picked up, or anything," don't forget that I was playing dominoes with you from 8:30".

MR. WARE: Now, we must object to this conversation, and to any other conversations in which, according to the witness, the defendant took no part whatever, and as far as we know, didn't hear what was said, and didn't know what they were talking about.

THE COURT: Well, unless it appears that he took part in the conversation I shall sustain the objection and strike out the testimony.

MR. EDWARDS: He has already testified to what the defendant said first in this conversation, your Honor.

THE COURT: Well, you must make it clearer. Now, Mr. Stenographer, repeat the testimony as to the conversation.)  
(It is repeated by the stenographer).

BY THE COURT:

Q Now, where was the defendant when he spoke to Presser?

A At what time?

Q Well, when he first came into the room?

BY MR. EDWARDS:

Q When you say he and Presser were talking about the shooting.

BY THE COURT:

Q Now, describe the room?

A We were in the front room.

Q How many rooms are there in that apartment?

A Three rooms.

Q What were they?

A There was a front room and a bed room and a wash room.

Q No kitchen?

A No kitchen. It was a furnished apartment house.

Q A furnished apartment house?

A Yes, sir.

Q And what room did Goldberg come into when he came up there, as you say?

A The hall door leads right into the parlor and we were all in that room.

Q Now, who was in the parlor when he came in?

A There was Mr. and Mrs. Cohen, Mr. and Mrs. Katz, Barney Lewis, Izzy Presser, the defendant and myself.

Q Didn't you say that Katz was out When he came in?

A I said that he was out when he come in, but when Katz came back we were all there.

Q No. I asked you who was there when he came in. Goldberg came into that room, did he?

A Yes, sir.

Q And you were there, were you?

A Yes, sir.

Q And Presser was there?

A Yes, sir.

Q In the parlor?

A Yes, sir.

Q Anybody else there?

A Mr. and Mrs. Gordon.

Q Yes?

A Katz's wife and Barney Lewis.

Q Now, when Goldberg came in, you say that Presser spoke to him?

A Yes, sir. And Izzy said to him, "Why didn't you shoot when I told you?"

Q Yes. And what did he say to that?

A He said, "I couldn't. My gun wouldn't off." And so Izzy said, "My gun wouldn't go off either. That's why I told you to fire."

Q Go on.

A And then we started in talking about an alibi, in case anybody gets picked up. "Izzy told this Mrs. Gordon that, in case he gets picked up, she shouldn't forget that he was supposed to be playing dominoes with her since about 8:30 P.M., and Katzy and his wife and I come up after that.

Q Yes, go on. And what did the defendant say?

A This "Dutch" says---Izzy put "Dutch's" name in it, that "Dutch" should make that alibi that he was there, too, and "Dutch" said, "No, right after I shot, I met two girls on Houston Street, and I told them, 'In case anything happens to me, you shouldn't forget to say that I was in the Houston Street Hippodrome with you, at a moving picture show.'"

Q At what time? Can you fix the time?

A I can't recollect what time he says.

BY MR. EDWARDS:

Q Now, was there anything more said in that conversation?

A No, sir.

BY THE COURT:

Q Well, how long did you remain there?

A How long did I remain?

Q Well, all of you? How long did Goldberg remain there?

A Until about eleven thirty he remained there.

Q And did he go away with any one or alone?

A He went away with Izzy Presser.

Q And you do not recall anything else at this time that was said by Goldberg or Presser, in Goldberg's presence, or by any one else there in his hearing or presence, in a general conversation?

A Goldberg and Izzy Presser exchanged overcoats and "Dutch" was wearing a cap, and he took "Katzy's" derby hat and left "Katzy" his cap.

Q You mean that "Dutch" was wearing a cap at the time that he care into the apartment?

A Yes, sir; and when he went home, he took "Katzy's" derby hat.

Q When he left that apartment?

A Yes, sir. He went home with the derby and Izzy Presser's overcoat.

BY MR. EDWARDS

Q Now, did Izzy Presser make any change of clothing?

A He put "Dutch's" overcoat on.

Q Now, Was anything more said at any time by the defendant Goldberg, with respect to the shooting? You have told us about their saying that the irrespective guns would not work. Was any-

thing more said besides that?

A Yes.

Q What was that?

A "Dutch" said he fired the first shot and threw his gun in the street, and ran towards Houston Street, and, while running, he picked up the gun and put it in his pocket and Izzy Presser said, "After he fell, he was yellow, and he was s\*\*\*queeling, and he asked me to leave up on him, and, when I saw that he had a little life left in him, I bent over and give him another shot. And I was going to put "Rat" on his forehead, before I got away, but I didn't have no time." And then Izzy Presser said that he run up into some house, he said.

MR. WARE: Now, I object to this.

THE COURT: Now, I will allow a conversation in which Goldberg took part, but not a conversation in the presence of Goldberg, unless he participated in it.

MR. EDWARDS: But, if your Honor please, I submit that this is a general conversation in which he has already given what Goldberg said.

THE COURT: Now, that is the legal principle, Mr. Edwards. I am laying down the proposition of law. This defendant is not responsible for anything said or lone by Pressor, after the shooting. Anything said or done by either of them before the shooting, in the performance or carrying out of a plan to shoot the deceased, is admissible, as I have said, but the mere fact that he was present and heard things said, if he did not take part in the conversation, does not make it admissible.

MR. EDWARDS: I was just calling attention to the fact that he did take part in the conversation.

THE COURT: Well, let us get it right. Do not let us have any objection that is well founded in the record, if we can avoid it.

BY THE COURT:

Q Now, this was a talk between Goldberg and Presser?

A Yes, and between the whole crowd that was in the apartment at the time.

THE COURT: Well, now, that is admissible.

MR. WARE: Well, now, your Honor, in this last answer, it doesn't appear that Goldberg participated either by saying anything, or answering.

THE COURT: Why, he says Goldberg had made the declaration; that they were having a general conversation in which Goldberg took part, and, therefore, it is admissible.

MR. WARE: And, for the purpose of the record, I ask that the whole answer be stricken out.

THE COURT: I will deny the motion on the ground that this was a general conversation in which Goldberg and Presser took part.

MR. WARE: But it was subsequent to the shooting.

THE COURT: Why, yes. It would not be binding On Goldberg, if he had not taken part in the conversation. The mere fact of his presence is not enough. That is not the point.

MR. WARE: Exception.

BY MR. EDWARDS:

Q Now, was anything else said by Goldberg that you recollect?

A Not that I recollect.

Q Now, after that---well, how late did they remain there?

A Until about 11:30 P.M., something like that.

Q And did they leave together or separately?

A No.

BY THE COURT:

Q When you say "they" you mean Goldberg and Presser?

A Yes, sir. They said they were going home to sleep.

BY MR. EDWARDS:

Q And did Barney Lewis remain there later than that?

A He slept there with us.

Q He slept there?

A Yes, sir.

Q And who else slept there in the apartment, that night, besides you and Barney Lewis?

A Mr. and Mrs. Gordon, and Mr. and Mrs. Katz.

Q And how were you distributed for the night; in what rooms did you sleep?

A In the front room, Mr. and Mrs. Katz and Barney Lewis slept, and in the bed room Mr. and Mrs. Gordon and I slept.

Q Now, what time did you get up, the next morning?

A I got up about twelve o'clock.

Q And did you see this defendant again that day?

A Yes, sir.

BY THE COURT:

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Q You mean the next day after you got up?

A Yes, sir.

BY MR. EDWARDS:

Q Where?

A In his room.

Q About what time?

A About half past twelve or one o'clock in the afternoon.

Q Did you go up to his room?

A Yes, sir.

Q Where was his room?

A 215 Forsyth Street.

Q Now, before you went to his room, had you seen Presser?

A Yes, sir.

Q Did you have a talk with him?

A Yes, sir.

Q Did you go up to Goldberg's room alone, or with Presser?

A Alone.

Q And did you have a talk with Goldberg while you were in his room?

A Yes, sir.

Q And was any one else there?

A When I come up, I found him in bed.

Q Alone?

A Alone.

Q And did you have a talk with him, alone, there?

A Yes, sir.

Q And what conversation did you have with him there? Anything about this shooting?

A Pertaining to the case?

Q Yes?

A Yes.

Q Tell me what you said to him and what he said to you?

A I told him I just saw Izzy Presser, and Izzy Presser told me there is an alarm out for my arrest, and I was kind of nervous, and

Izzy told me to go up to his room until he tells me what to do, and that's how I come to go up to the room.

Q And what did he say to that?

A Nothing.

Q Did you have any further talk at all?

A After that, Izzy Presser and Barney Lewis come up.

Q Yes. How long afterwards?

A About half an hour or an hour later.

Q Was anything said by the defendant, or was there any conversation in which he took part, respecting the shooting, then?

A Yes, sir.

Q What was said?

A Izzy Presser said to me that two detectives named Kemp and Rafael, were around looking for me.

Q Did Goldberg say anything in that conversation?

A Well, in fact, he is a very quiet man. He never says much. He heard all of it, but I can't recollect whether he said anything or not.

MR. WARE: And I object to that and move to strike it out, your Honor.

THE COURT: Objection sustained. Strike it out.

THE WITNESS: Well, the majority of the talking was done by Izzy Presser.

BY MR. EDWARDS:

Q Well, as a result of what was said there at that time, where did you go?

A After that?

Q Yes?

A I sent "Dutch" down. I told him---

BY THE COURT:

Q That is, the defendant?

A Yes, sir. I told him to go over to Walter Friedlander, the lawyer, who's got an office at First Street and Second Avenue, and tell him that I wanted to see him, and that he should come up to his room.

And the defendant went over with Izzy Presser, and told this lawyer---

MR. WARE: I object to that, and move to strike that out. He wasn't there.

THE COURT: Objection sustained. Strike that out.

BY THE COURT:

Q You asked him to go to Walter Friedlander?

A Yes, sir.

Q And did he leave the room?

A Yes, sir.

Q And did he return?

A Yes, sir.

BY MR. EDWARDS

Q Who went with him?

A Izzy Presser.

Q And did you see Friedlander after that?

A Yes, sir; up in the room.

Q And was the defendant with him?

A Yes, sir. And Izzy Presser and Barney Lewis. And, in the mean time, Izzy Presser told me to telephone home to my people while he was there.

THE COURT: No. Never mind that, strike that out.

BY MR. EDWARDS:

Q Unless Goldberg took part in the conversation, do not give it. Goldberg did take part in this conversation.

BY THE COURT:

Q Now, I understood you to say that Goldberg left, for Friedlander's Office?

A Yes, sir.

Q And did he go alone?

A No, he went with Izzy Presser and Barney Lewis, and I remained alone in the room. And, in the mean time, Izzy Presser told me to telephone to my people. While we were all in the room, he said that.

Q Did you have a telephone in the room?

A No, sir.

Q Well, then don't say anything about what he did when you were not present?

A I was present.

Q Well, he did not telephone in your presence, did he?

A You said they left you alone in the room?

A No, sir; I was in the room with the three of them at the time, and Izzy Presser suggested that now that they are looking for me, and I will have a bum alibi, being that these people that we were sleeping with were prostitutes and pimps, that I should have the alibi that I slept home, and have my people take the stand for me, if I got arrested; to make an alibi that I slept home at the time of the shooting. And then Izzy suggested to "Dutch" that he telephone home to my people, and he asked me if he can get the people on the telephone.

MR. WARE: I object to that.

THE COURT: Yes, strike it out.

BY THE COURT:

Q Now, you say Presser told Goldberg to telephone to your

house?

A Yes, sir; and with my consent also.

BY MR. EDWARDS:

Q And what did Goldberg say about it?

A He went down to telephone.

Q Did he tell you that when he came back?

A Yes, sir; that he telephoned home, and he told me he was talking to my brother on the telephone, then my brother come down, with my father, but my father didn't want to go up in the room.

THE COURT: Strike that out, about the father.

THE WITNESS: Then my brother come up in the room.

BY MR. EDWARDS:

Q Did you see your father downstairs after wards?

MR. WARE: That is objected to as leading.

THE COURT: Objection sustained.

BY MR. EDWARDS:

Q Now, go on.

THE COURT: Strike out all reference to the father.

BY MR. EDWARDS:

Q Was "Dutch" there when your brother came up?

A Yes, sir.

Q Well, did "Dutch" say anything to any of you then?

A He told me that he told my brother, on the telephone, that I was in a little trouble, and he should come down, and he come down and come up to the room; and, when he come up to the room, he found "Dutch" there, Izzy Presser, Barney Lewis, myself and

some other fellow that was boarding there at the time, by the name of "Gersh".

Q And was there any conversation at that time in which Goldberg or "Dutch" as you call him, took part?

A Yes, sir.

Q What was that?

A He told my brother that there was an alarm out for my arrest, and the cops think I killed "Moiche", and the best thing for me to do is to say that I slept in Kate's house, but it ain't a good alibi, and he should take me home, and have the alibi that I slept home. Well, he didn't tell me this part that I was going to say now, but Izzy Presser was there.

Q Well, don't tell that then. Where did you go. after that?

A There is a Forsyth Street car going north---there is a 2nd Avenue car going north on Forsyth Street, and that passed right in front of the house where we were, and "Dutch" was downstairs, and so Presser and Barney Lewis were downstairs, laying out that no police shall be around while me and my brother jumps on a Second Avenue car, and rides home. I live on 120th Street, right near Second Avenue.

Q And when were you arrested?

A The same night.

Q And by whom?

A Detectives Kemp and Rafael.

Q Where?

A At my home.

Q And since that time---at the time of your arrest you were taken to the City Prison?

A Yes, sir.

Q And after that you were transferred to the House of De-

tention?

A Yes, sir.

Q And have been there ever since?

A Yes, sir.

MR. EDWARDS: That is all.

THE COURT: How long will your cross examination take, Mr. Ware?

MR. WARE: It will probably last at least until one o'clock and, if that is the adjournment hour, can it not go over until Monday morning?

MR. EDWARDS: Would it not be better to let the whole cross examination go over until Monday morning, so as not to have it interrupted?

MR. WARE: I would much prefer that, sir, because it would give me an opportunity of consultation with my associate as to the matter of cross examination.

THE COURT: Very well, then. I think, Mr. Edwards, that we might, in the end, gain time.

MR. EDWARDS: I don't think we would lose any, sir.

THE COURT: By having all the cross examination on Monday. And, next week, we can sit as late as you wish to dispose of the case, and try to finish it up as soon as possible.

Now, gentlemen of the jury, the Court will take a recess until Monday morning at half past ten o'clock.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Monday morning, August 9th, 1915, at 10:30 o'clock.)

THE PEOPLE VS. HENRY GOLDBERG.

TRIAL RESUMED.

New York, August 9th, 1915.

JOSEPH BERGER, being cross examined, testified as follows:

CROSS EXAMINATION BY MR. WARE:

Q Your name is Joseph Berger?

A Yes, sir.

Q How old are you, Joseph?

A Twenty-two.

Q And you say you work for your father?

A Yes, sir.

Q Is your father's business at Coney Island now?

A No, sir; at Rockaway Beach.

Q And that is his only business there?

A Yes, sir.

Q And what is that business?

A Delicatessen.

Q Delicatessen?

A Yes, sir.

Q How long is it since you have been to Rockaway?

A Sir?

Q How long is it, how many days is it since you have been to Rockaway Beach?

A I have been out there Saturday.

Q Last Saturday?

A Yes, sir.

Q And how long before Saturday did you go out there?

A About a week before.

Q You were not at Rockaway Beach last week?

A Sir?

Q You were not at Rockaway Beach all of last week, were you?

A No, I was out there one day.

Q Well, what are your duties at your father's establishment that allow you to work there one day a week?

A I don't work there.

Q Where do you work, then?

A You asked me if I was out at Rockaway Beach last week.

Q Just answer my question. Where do you work?

A Now?

Q Yes?

A I am not working at all, now. I am in the House of Detention.

Q How long have you been in the House of Detention?

A About ninety days.

Q Well, you say you went to Rockaway, Beach last Saturday?

A Yes, sir.

Q Well, how did you get out of the House of Detention?

A The Detective took me out there.

Q And what was the name of the Detective?

A Mr. McManus.

Q And you stayed at the Beach over Sunday?

A No, sir.

Q Did you come back the same day?

A Yes, sir.

Q With the. Detective?

A Yes, sir.

Q And you went back to the House of Detention?

A Yes, sir.

Q And what did you go to Rockaway Beach for? To see your father?

A No, sir; I was looking for a couple of witnesses in the case, and the detective said he got information that they were out there, and we went out there looking for them.

Q You are very much interested in seeing this defendant convicted, are you not?

A No, sir.

Q Why, you remember the hearing before the Coroner's Jury, don't you?

A Yes, sir.

Q You were accused of this crime, weren't you?

A I don't

know.

Q You don't know that you were held by the Coroner's Jury for this---for killing Rubenstein?

A I was held by the Coroner's Jury for the action of the Grand Jury.

Q Now, before you went to the House of Detention, you say you worked for your father?

A Yes, sir.

Q What did you do for him?

A I was in business with him.

Q Well, what did you do, what part of the work, if any, did you do?

A All around work; tended behind the counter, went out with orders, and went out to get orders, and whatever there was to do, I took part in doing.

Q And was this at Rockaway Beach?

A Both places, in New York and at Rockaway Beach.

Q When did he start his business at Rockaway Beach, his Rockaway Beach establishment?

A About May 15th, he starts it.

Q And were you in the House of Detention on May 15th?

A I was.

Q Then you didn't work at Rockaway Beach, did you?

A I couldn't have, no, sir.

Q Well, you didn't?

A No, sir.

BY THE COURT:

Q Well, in other years, did you work at Rockaway Beach?

A Yes, sir.

Q That is what he means?

A Yes, sir.

BY MR. WARE:

Q What did you ever do at Rockaway Beach or at the New York place either?

THE COURT: Why, he has told you, Mr. Ware. I think he has given a sufficient answer on that subject.

MR. WARE: Yes, if it is the fact.

BY MR. WARE:

Q And do you mean to say that you ever tended regularly behind the counters, in your father's delicatessen stores?

A Yes, sir.

Q Have you ever gone by any other name than Berger?

A No, sir.

Q Didn't you live at 271 South Fifth Street?

A No, sir.

BY THE COURT:

Q That is, Brooklyn?

A No, sir.

BY MR. WARE:

Q Brooklyn?

A No, sir.

Q Didn't you ever live there with a girl as Mr. and Mrs. Baker?

A No, sir.

Q Haven't you ever lived with any girl?

A No, sir.

Q Haven't you lived on the earnings of a girl who called her self Mrs. Baker?

A No, sir.

Q Do you remember a girl whose first name was Bertha?

A Yes, sir.

Q Who is she? What was her other name?

A Grossman.

Q Where did you live with her?

A I didn't live with her.

Q Where did she live?

A Third Street.

Q New York or Brooklyn?

A New York City.

Q And what was her occupation? Do you know?

A Embroidery; she works at embroidery.

Q Where? Do you know?

A No, sir.

Q Isn't she a prostitute?

A No, sir.

Q You have lived with her, haven't you?

A No, sir.

Q You never went with any woman in your life, or at least you never lived with any woman?

A Never lived with any woman.

Q Now, you remember a man named Ripstein, don't you?

A Yes, sir.

Q When did you first meet Ripstein, about?

A About?

Q Yes?

A I know him for quite a number of years, though living on Orchard Street.

BY THE COURT:

Q He lived on Orchard Street?

A Yes, sir; years ago.

BY MR. WARE:

Q Well, did you ever commit any burglary with Ripstein?

A No, sir.

Q Do you remember that he was arrested?

A Yes, sir.

THE COURT: Well, I will exclude that, as immaterial.

BY MR. WARE:

Q Well, you remember that he was convicted, don't you?

MR. EDWARDS: Well, I object to that, as immaterial.

THE COURT: Well, what has that got to do with him. He says

he was never associated with him, that he never committed any crime jointly with him. He says he used to live in that neighborhood, that he lived in the same street, but that he never committed any crime with him. That is as far as you can go on that line. If you have any particular crime in mind, you may ask about it.

BY MR. EDWARDS:

Q Do you know a man named Hymie Kornblatt?

A Yes.

Q Now, did you and Kornblatt---did you, Joseph Berger, have any business transaction of any kind with Hymie Kornblatt?

A Yes, sir.

Q Well, now, just tell us what it was.

THE WITNESS: It ain't pertaining to this case, your Honor.

MR. EDWARDS: May we have the time fixed?

THE COURT: You may inquire about any crime that he may have committed with him, you may refer to any particular crime.

BY MR. WARE

Q Did you tell Kornblatt that you had any stolen goods, outside of New York City, that you wanted to sell him?

A No, sir.

Q Did Kornblatt give you thirty-five dollars in cash, and pawn his watch so as to give you the balance of fifty dollars, so that you could go and get these goods?

A No, sir.

Q Did you know Kornblatt as a burglar and a fence?

A Yes, sir.

Q How is it that you, a business man, working behind the counter for your father, know and associate with fences and burglars, and general crooks?

MR. EDWARDS: I object to that.

THE COURT: I sustain the objection to that. There is no evidence that he associated with him. He said he knew him.

BY MR. WARE:

Q Well, you know Kornblatt, don't you?

A Yes, sir.

Q And you know Ripstein, don't you?

A Yes.

Q That's two. You have known Goldberg how many years?

A About eight or ten years.

Q That's three. You know Izzy Presser, don't you?

A Yes, sir.

Q How long have you known him?

A Since September.

Q Now, that's four.

MR. EDWARDS: Four what, Mr. Ware?

MR. WARE: Four men.

BY MR. WARE:

Q You know that all those men have been convicted of crime, don't you?

A Yes.

Q And you have contributed to their defense, haven't you?

A Whose defense?

Q Well, Ripstein's?

A I have.

Q You have?

A Yes, sir.

Q You called on Mr. Horowitz frequently, every day, in re-

gard to Ripstein's defense, didn't you?

A No, sir, in regard to Presser's defense.

Q In regard to Presser's defense?

A Yes, sir.

Q You contributed money towards Presser's defense, didn't you?

MR. EDWARDS: You don't mean in this case?

MR. WARE: No.

A No, sir. I did in the last case, the stick-up case.

BY MR. WARE:

Q Didn't you have anything to do with the stick-up case?

A No, sir; I had absolutely nothing to do with it.

Q And you don't refer now to the Kornblatt case now, do you?

A What do you mean by the Kornblatt case?

Q I have just asked you whether Kornblatt gave you fifty dollars or less, some wheres from thirty-five to fifty dollars?

A I have answered that question.

Q And was Ripstein with you at the time you had the conversation with Kornblatt, if you had one?

A No, sir.

Q Now, Berger, why did Rubenstein cut you?

MR. EDWARDS: Now, that is objected to as calling for the operation of Rubenstein's mind.

THE COURT: I will sustain the objection to that. How can he know?

MR. WARE: Well, I think he does know very well.

THE COURT: Well, he may have his opinion about it. You

may inquire into his relations with Rubenstein, if you like.

BY MR. WARE:

Q You have known Rubenstein, or did know him, how long?

A Since October.

Q I can't hear you?

A Since October.

BY THE COURT:

Q Of last year?

A Yes, sir.

BY MR. WARE:

Q Of 1916?

A Yes, sir.

Q Keep your voice up, please, because we would all like to hear what you have to say. And how did you come to meet Rubenstein?

A Through Izzy Presser.

Q Did you ever do any jobs with Rubenstein of a criminal nature?

A No, sir.

Q Well, what was your acquaintance with Rubenstein about? Where did you meet him? And what did you know him about?

A Izzy Presser, Barney Lewis and a fellow named Benny Geld---he's dead now, God rest his soul in peace---and I, the four of us, were getting up a collection for Ripstein, in the stick-up case, and we met Rubenstein. That's how I met him.

BY THE COURT:

Q Do you mean that you went to him to help along the collection?

A No, sir; we were walking around, making the collection, and on our way we met Rubenstein.

Q And Presser introduced you to him?

A Yes, sir.

Q And was Rubenstein interested in making this collection?

THE COURT: Well, how is that material, whether he was or not?

MR. WARE: Well, Rubenstein is the dead man. We want to show the motive.

THE COURT: Well, that was last October, when he says that he met him, and that Izzy Presser introduced him to the witness.

THE WITNESS: Yes, sir; and he knew Ripstein, and Izzy Presser said that Ripstein was arrested, and he went along with us and helped to make the collection.

BY MR. WARE:

Q Well, why were you interested in making the collection for Presser?

A It wasn't for Presser. It was for Ripstein.

Q Did you ever make a collection for Presser?

A No, sir; for Ripstein.

Q Well, wasn't it Rubenstein that told you that as you had got Ripstein in trouble, it was up to you to raise the money for his defense?

A No, sir; I never saw Rubenstein in my life before that.

THE COURT: No. The question is did Rubenstein tell you that.

A No, sir; he didn't.

BY MR. WARE:

Q Well, why did you---why were you interested in making a

collection for Ripstein?

A Because I bought the stolen goods of Izzy Presser and Sam Ripstein, the goods that they got on the job they done, I bought the stolen goods from them. I bought a ring and a pin and a chain from them, and that's why I'm in this case to-day, and that's why I was cut, through me buying that stuff.

Q Cut by Rubenstein?

A Yes.

Q And he is the man that was murdered, Rubenstein?

A Yes, six.

BY THE COURT:

Q Did you know that the goods were stolen when you bought them?

A No, sir.

Q Yes or no?

A No, sir.

BY MR. WARE:

Q From whom did you buy those goods?

A From Sam Ripstein and then Izzy Presser come over and said---

Q Never mind that. Didn't you know that Ripstein had been convicted of crime?

A No, sir; not before I bought them.

Q Well, after you bought them, you found out pretty quick?

A Yes, after Sam Ripstein was arrested.

Q What did you buy?

A A ring, a pin and a chain.

BY THE COURT:

Q That was last October, was it?

A Yes, sir.

BY MR. WARE:

Q And do you mean to say that you bought this ring, pin and chain, thinking that it was Ripstein's property?

A Thinking

it was Presser's property.

Q Thinking it was Presser's property?

A Yes, sir.

Q And how long had you known him?

A Since September.

Q Didn't you know that he had been convicted of crime?

A Yes, sir.

Q Well, why did you buy property supposing that it belonged to a man that you knew had been convicted of crime, jewelry?

A Because Izzy Presser swam away from the Workhouse, and he just got away from the Workhouse, and he is broke, and that's why I bought the stolen property.

Q How much did you pay for it?

A Thirty-five or forty dollars, I just can't remember.

Q And what did you do with the stolen property?

A I kept it.

Q Well, that has nothing, however, to do with the charge that Kornblatt made against you, has it?

A He didn't make any charge against me that I know of.

Q Didn't he say that he had given you between thirty-five and fifty dollars?

A No, sir; I answered that question once before.

Q Didn't he?

A No, sir.

Q And didn't he accuse you of having swindled him, flim-flammed him out of that money?

MR. EDWARDS: I object to that, what he was accused of.

THE COURT: No, that is not any evidence, Mr. Ware, an ac-

cusation.

BY MR. WARE:

Q Well, didn't you take any money from him?

THE COURT: Why, you have gone all over that Kornblatt matter. He says he had nothing to do with him.

BY THE COURT

Q Isn't that so?

A Yes. I have answered that half a dozen times, your Honor.

BY MR. WARE:

Q Now, were you standing with another man, talking about an advertisement, or talking about any conversation, or having any conversation at the time Rubenstein cut you?

A Yes.

Q And who was the other man?

A There was two men there, Barney Lewis and a fellow by the name of "Lela".

Q You have written letters to Barney Lewis since you have been in the House of Detention, haven't you?

A Never.

BY THE COURT

Q Yes or no?

A No, sir.

BY MR. WARE:

Q Haven't you written letters to anybody since you have been in the House of Detention?

A Yes.

Q Do you enjoy rather friendly relations with any of the Police Officers on the East Side, where you live?

A None whatsoever.

Q Your father is rather a wealthy man, isn't he, as money

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goes over there?

A No, sir.

Q Do you know any reason why you have never been convicted of crime?

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

BY MR. WARE:

Q In connection with them?

MR. EDWARDS: I object to that.

THE COURT: I will sustain the objection.

BY MR. WARE:

Q Do you know Mr. Deuel?

A I do.

Q I can't hear you?

A I do.

Q Well, why don't you say it. Why don't you speak out.

A I said it.

Q And where did you meet him?

A Up at the District Attorney's Office.

Q In his office?

A Yes, sir.

Q And have you been promised that you would not be indicted, if you testified in this case? That you would not be indicted for the murder of Rubenstein?

A I wasn't promised anything whatsoever.

Q Were you told to say that you were not promised anything at all?

A No, sir.

Q Do you know why it is, after you were held by the Coroner's Jury for the murder of Rubenstein, that you are now sitting here as complaining witness against this boy, this defendant?

A No,

sir.

MR. EDWARDS: And I object to that question, which calls him the complaining witness. He is not. The complaining witness, or, rather, the man who would have been the complaining witness in the assault case is dead.

THE COURT: Well, he is a witness.

MR. EDWARDS: Yes, a witness simply.

THE COURT: The question is technically wrong; that's all. Go on. It has been answered.

BY MR. WARE:

Q Were you running a racket for anybody about the time that you were cut by Rubenstein?

A Yes. Not I personally. The whole crowd, the gang.

THE COURT: Well, what do you mean by a racket? The jury may not understand it.

MR. WARE: Oh, I think they understand it. Any way, he does.

BY MR. WARE:

Q Well, a benefit?

A A benefit and a ball.

Q Well, where was that going to be held?

A The progress Casino, 28 Avenue A.

Q And who was the benefit for, or the racket? You know what I mean by a racket.

THE COURT: Well, the jury does not, perhaps. He says that it was a ball Go on.

BY MR. WARE:

Q Who was it for?

A Sam Ripstein.

Q And an effort was being made to appeal his case, wasn't it?

A Yes, sir.

Q Yes, is that right?

A Yes sir.

Q Speak up. And you were interested in having his case appealed, weren't you?

A I was.

Q Now, was that benefit ever held?

A No, sir.

Q Is that why Rubenstein cut you, because you didn't contribute to that appeal?

A No, sir.

Q Do you know why he cut you, then?

MR. EDWARDS: I object to that.

THE COURT: It is only an expression of his opinion. How can he know?

THE WITNESS: Your Honor, I would like to answer that question.

THE COURT: Well, he says he would like to answer it, but it is only speculative.

BY MR. EDWARDS:

Q Go ahead, Berger, and tell us all about it.

THE COURT: He may have his opinion about it.

THE WITNESS: Can I answer that question, your Honor?

THE COURT: Yes. The District Attorney says you may. He does not object.

A There, was a crowd all together, Izzy Presser, "Dutch", "Katzy",

Barney Lewis and myself.

BY MR. WARE:

Q Yes, the gang?

A Yes, sir.

Q Of which you were a member?

A Yes. Izzy Presser was most interested in it, because Sam Ripstein stuck to Izzy Presser and didn't squeal on him, and was convicted, and took a bit from ten to nineteen years, and that's why Izzy wanted to run the benefit for him. And, when Sam Ripstein was convicted, he told us to accuse Morris Rubenstein of being a rat and a squealer; and he said that he told Charlie Landers his whole pedigree, and he took the stand against Sam Ripstein at the time of the trial; and that's why none of us talked to him, and had him down for a squeeler, He out me because I didn't have the reputation and name like "Dutch" and Izzy Presser, or any of the rest of them had. I was known as a working man all my life, and he started with me, and threatened to go up the ladder, and give it to the whole of the crowd. That's why I was cut.

BY MR. WARE:

Q Didn't you have the tickets printed at a place on Eldridge Street?

A We all had them printed. Izzy Presser and the whole crowd ordered them as well as I did.

Q You don't mean to say that the whole crowd went into the printing office together?

A Yes, I do.

Q And where is that place?

A On Forsy the Street.

Q You visited him and ordered those-tickets, didn't you?

A We all did; we all visited him. I answered that question before.

Q Well, just you answer the questions, and don't make any comments.

MR. EDWARDS: Well, let the Court admonish the witness, Mr. Ware.

BY MR. WARE:

Q Who hired the hall?

A I did.

Q You were running the whole proceeding, weren't you?

A I was not.

Q And do you mean to say that you believe that Rubenstein out you because the rest of you were crooks and you were a respectable working boy?

A That's what I mean to say.

Q Why did you travel with these people, and get up benefits for them when they got in trouble?

A Why I travelled with them?

Q Well, you travelled with them when you went to the printer's, didn't you?

A Yes; last winter my father didn't have any store, and I wasn't working last Winter. When I come downtown them people was always out of work, and I met them every day, and that's how I come to travel with them.

Q And when did your father give up his store?

A About last year, a year and a half ago. He gave up the store in New York City and sold it.

Q So that you haven't worked anywhere then for the last

year, have you?

A That's right.

Q Eh?

A Yes.

Q Where have you worked?

A I said I hadn't. I answered that I didn't work the last year.

Q Therefore, what you said about working for your father in the winter in New York, and working for him in the summer at Rockaway, isn't correct, for the last year and a half, is it?

A It's correct for the last winter; I told you I wasn't working. It's correct until we closed up, last season, in Rockaway Beach.

Q When did you close the season in Rockaway Beach?

A In September, after Labor Day.

Q And you haven't been working since then, have you?

A That's right.

Q Now, how about your gambling places? Did you have any?

THE COURT: What do you mean? That he conducted a gambling house?

MR. WARE: Yes, sir.

BY MR. WARE:

Q Did you run a gambling house or room?

A I did.

Q Where?

A On Eldridge Street.

THE COURT: I simply wanted to make it clear to the jury.

MR. WARE: Your Honor, he knows what I mean.

THE COURT: Now, I want to try to get along as rapidly as possible, and I want to give you all the time you require, but the questions must be so phrased that they will be intelligible

to all.

MR. WARE: And I would like to frame the questions so that they are intelligible to the witness.

THE COURT: Now, you asked him if he conducted a gambling house, and he said yes. Please go on.

BY MR. WARE:

Q Where is that gambling house?

A In Eldridge Street.

BY THE COURT:

Q What number?

A I don't remember the number now

BY MR. WARE:

Q What kind of gambling did you carry on there?

A All kinds of gambling.

Q I think you said all kinds of gambling,. didn't you?

A That's what I said.

Q I couldn't hear you. Speak up. For how long?

A About two weeks.

Q And when you say all kinds of gambling, do you mean stuss and craps?

A No, sir.

Q Not craps?

A No, sir; just cards.

Q Didn't you have any roulette wheel or faro bank?

A No, sir.

Q Did you have a pool room there, did you bet on the races?

A No, sir.

Q Who was your partner, if you had any, in that gambling house?

A A fellow by the name of Louie Greenberg.

Q And what month were those two weeks in?

A I can't remember.

Q I can't hear you, but I presumed you answered.

A I said I couldn't remember.

Q Well, was it September, October, November or December, 1914?

A I don't remember.

Q Do you mean to say that you ran a gambling room for two weeks, and you don't remember whether it was 1914 or 1915?

A It wasn't exactly a gambling room, it was a candy store.

Q Was this man whose name you have just told us known commonly as "Zabo"?

A No, sir.

Q Well, do you know "Zabo" a gunman and a gangster?

A Yes, sir.

Q And wasn't he in partnership with you in any gambling rooms?

A No, sir.

Q Tell, when this place was close---you remember that it was closed, don't you?

A Yes.

Q And who closed it?

A The detectives.

Q And do you know what detectives?

A No, sir.

Q You don't know the name of the detective that closed it?

A No, sir; and, in fact, the detectives didn't close it. The detectives come in there, and, after they went out, my partner took a chair, and threw the mantel down, and busted the place up himself.

BY THE COURT:

Q You mean the visit of the detectives discouraged you, without any raid?

A Yes, sir.

Q You were not there when they came in?

A Yes, sir.

Q You were there?

A Yes, sir.

BY MR. WARE:

Q And you don't know who they are?

A No, sir.

BY THE COURT:

Q Well, would you have let them in if you had known who they were?

A Yes, sir; I would.

Q You would have allowed officers in, if you knew them?

A Yes, sir.

THE COURT: Well, I do not see what difference it makes whether he knew them or not, Mr. Ware.

MR. WARE: It would make a difference, if they were interested in this present prosecution.

BY THE COURT:

Q Was that before the death or after the death of Rubenstein?

A It was even before I knew Rubenstein.

BY MR. WARE:

Q Well, how do you know it was before you know him, when you don't remember what month it was last year?

A Because it wasn't last year.

Q Well, how many years ago was it?

A It two winters ago.

Q Oh, while you were working for your father?

A Yes.

Q Now, let us come to the time that you were not working, from September last, 1914. How did you support yourself then?

A I was living home with my people.

Q You didn't do any work at all?

A I received a check from my father, at the end of the season.

Q Well, don't you get a regular salary?

A No, sir.

Q Well, then, how do you pay your expenses while you are not working?

A Anything I need, I ask my father, and he always gives me.

Q You never got a regular salary, did you?

A No, sir.

Q What was the amount of the check that you received from your father?

A Fifty dollars.

Q And how long did that keep you?

A I can't exactly just remember.

Q You didn't run any gambling place then?

A No, sir.

Q Didn't you run a gambling place last fall?

A No, sir.

Q You didn't do anything at all last fall then?

A I had a pool room.

Q Well, then, you did do something?

A It was no gambling place.

Q Where was the pool room?

A Stanton and Allen Streets.

BY THE COURT:

Q What do you mean by a pool room? A place where they play pool?

A Yes, sir; pool and billiards.

Q Not a place where they bet on the races?

A No, sir.

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Q A pool parlor?

A Yes, sir.

BY MR. WARE:

Q You wouldn't bet on the races, would you?

A Yes, I would, but I didn't.

Q Well, what did you do in the pool room?

A Owned the pool room.

Q And how many pool tables did you have?

A Five.

Q And who was your partner in that?

A Nobody.

Q Well, why was that place closed up?

A Because we couldn't get our license, we couldn't get the license. It was revoked.

Q The license for what?

A The license for the pool room. It was up, the license went out.

Q Well, what license was up?

A The license for the pool room.

THE COURT: Well, if you don't know it, Mr. Ware, there is an ordinance requiring pool parlors to have a license, and he told you that he couldn't get the license renewed and closed the place.

BY MR. WARE:

Q Do you know Policeman Kemp?

A Yes.

Q Didn't he close that place up?

A I don't know who closed it up. There was a few detectives down to investigate the place, and he was one of them.

Q And you closed up, as you did the year before?

A What do you mean?

Q Well, don't you remember a gambling place that you told

us about, that, as soon as the detectives came there, you closed up right after they came?

A Yes, I remember that.

Q And as soon as the detectives came to the pool room, you closed it up, didn't you?

A Well, as I said, I closed the same way.

Q Well, you closed it up because the detectives came there?

A Yes, but I didn't close it the same way. It wasn't broken up, because the pool tables didn't belong to me, and there was a mortgage on them.

Q Is it not a fact that the detectives stopped that so-called pool room, because they claimed it was a resort for gun men and crooks?

MR. EDWARDS: That is objected to as immaterial, irrelevant and incompetent, what the detectives thought.

THE COURT: I will sustain the objection. I will allow you to ask him whether it was a resort for gunmen and crooks.

MR. WARE: Well, I don't care to ask him that.

BY MR. WARE:

Q Didn't the police officers, the detectives, tell you that that was why you would have to close up.

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

THE COURT: I will exclude that. He said he could not get a license from the regular authorities.

BY MR. WARE:

Q You never got a license in your life, did you?

A I never tried to get that license, either, in my own name.

Q (Question repeated)

A Well, I want to explain.

MR. WARE: Well, if your Honor please, I ask for a categorical answer. It doesn't require any explanation.

THE COURT: The testimony is given by the answer, not only by the question. Now, please go on.

BY MR. WARE:

Q Now, go on and answer, then.

A Before I bought this place from this man, he wanted to, get rid of the place, and I give him a deposit of twenty-five dollars, and I wanted to get the license out in my own name, and he says he has a pull with the Commissioner of Licenses, and he would get the license much easier than I would. And he says, "Then, after you are there a year, you can have it changed to your own name", which I consented to.

BY THE COURT:

Q How long did you conduct the place?

A About three weeks.

Q And the license was up then, and you could not get it renewed?

A No, sir.

Q And you went out of business?

A Yes, sir.

Q And you didn't own the property there?

A No, sir; it was mortgaged.

BY MR. WARE:

Q You say you never went under any other name than Joseph

berger?

A Yes, sir.

Q Well, I suppose you said something then, because I saw you shake your head.

A I said, "No, sir."

Q And did you ever go under the name of Joseph Turnbull?

A No, sir.

Q In regard to your pool room, do you know how long it ran there under the name of the person who had it before you did?

A No, sir.

Q Who did you get it from?

A The pool room?

Q Yes?

A I bought it from---

Q Yes, or took it from?

A Mr. Berman.

Q And how long had he run it, do you know?

A About a year I think.

Q And how long did you have it?

A About three weeks.

Q Don't you know that, as soon as the detectives found that you had it, that that is the reason they closed it up, because you were in charge?

THE COURT: I will exclude the question. The detectives may have been entirely wrong. We are not calling for the operation of their minds.

MR. WARE: I think this is one of the few instances where they are always right.

THE COURT: Yes, but there is no evidence of it.

BY MR. WARE:

Q Can you explain why it was, when the detectives found

you were running the pool room, they visited it, and told you to close it up.

THE COURT: I will exclude that, as immaterial.

BY MR. WARE:

Q Do you know why they came to your pool room?

MR. EDWARDS: Objected to.

THE COURT: I will exclude that, as immaterial.

BY MR. WARE:

Q Was that pool room a resort for crooks?

A It was open for business, for anybody that wanted to come down and play pool there.

Q Anybody?

A Yes, anybody.

Q And those who did come there and make it their headquarters were Rubenstein---eh?

A Yes, he used to come down there, yes.

Q Do you know a boy named "Yook"?

A Yes.

Q You know him?

A Yes.

Q And he used to hang out there, didn't he?

A No, not hang out there. He used to come down there occasionally.

Q Do you remember anybody who came in there at all, who didn't make their living by means of stealing or crime?

A Everybody that come down there, I always thought was honest, and worked for their living, that I knew.

Q Why, didn't you know that Rubenstein had been convicted of crime?

A Yes, but it wasn't my business at all. I didn't

care whether he was or not. It wasn't none of my business.

Q As long as he came in your place?

A Yes, sir; and spent his money and acted like a gentlemen in the place.

Q Now, do you remember---was Bertha over to the workhouse?

MR. EDWARDS: I object to that as entirely immaterial.

THE COURT: I will exclude that, as immaterial.

BY MR. WARE:

Q Did you ever visit any women at the workhouse?

A Yes, sir.

THE COURT: I will exclude that, as immaterial, whether he did or not. Missionaries go over there every day.

MR. WARE: Well, I don't claim that he is a missionary.

THE COURT: Well, you see, you open up a number of collateral issues.

MR. WARE: I'll take a chance of anything good being ever shown as to this witness.

BY MR. WARE:

Q Now, did you ever get any cards printed with the name, "Joseph Turnbull, Vancouver," on them?

A Do you mean Harry Turnbull?

Q Yes, did you have those cards printed?

A Izzy Presser's wife was over at the workhouse, and she got a visit one month there, and he wanted to get another visit in the same month, and he couldn't do it, and he wrote her a letter asking her to find out some girl there that don't get any visits. She wrote

him back that there is a girl up there by the name of Turn-bull, that don't get any visits. And they wouldn't let him go up to the workhouse to visit her, because he was an ex-inmate, and so he asked me to get the cards printed, and to visit this Turnbull woman, so that she would give a bundle to Izzy Presser's wife, that I took up.

Q So that you went over there and presented the card, "Harry Turnbull," did you?

A I. did not.

Q Well, what did you get it printed for?

A A friend of ours went there, with the printed card. I didn't want to go down to the Bureau of Passes, and he went there, as Harry Turnbull, and got the pass, and then I went over there as Harry Turnbull.

Q And Turnbull wasn't your real name, was it?

A No, sir.

Q Well, why did you tell me that you never went under any other name than Eurger?

A Well, I didn't.

Q Didn't you go by the name of Turnbull to the workhouse?

A I went there with the pass.

Q Well, do you mean to say that, when you went to the Island, you were not known as Harry Turnbull?

THE COURT: I will exclude that, as immaterial. He said that he went there on that visit with that pass, and he has explained how he came to go there.

MR. WARE: May I ask your Honor a question?

THE COURT: No, don't ask me any questions at all. You may

object, and I will rule, and you may take an exception.

MR. WARE: But I would like to ask your Honor a question at this point.

THE COURT: Now, one moment. If you have any objection to make, you may make it. I have given you a great deal of latitude already. These are all matters collateral, as to his credibility. Now, just proceed with the case in a proper legal way. You may have all the time you want, but we cannot afford to have the time frittered away. Now, he made that explanation. You may ask him whether he went under that name on any other occasion, or if that was the only time.

BY THE COURT

Q Now, did you ever go under the name of Harry Turnbull on any other occasion?

A No, sir.

Q Just on that occasion?

A Yes, sir.

THE COURT: Now, go on, please.

MR. WARE: Now, may I speak? I didn't want to interrupt your Honor.

THE COURT: No, it is not necessary. Proceed.

MR. WARE: Now, if your Honor please, I respectfully except to all the remarks your Honor has made in regard to me, and my mode of questioning, and putting in questions which I may have asked, and I ask your Honor to instruct the jury that they are absolutely to disregard any inference, or any idea that they may have inferred from your Honor's remarks to me, as to your

belief in the guilt or innocence of this defendant on trial here.

THE COURT: Why, I have not expressed the slightest opinion as to the guilt or innocence of the defendant on trial. Nothing is further from my mind. I merely wish you to go on and not repeat unnecessarily.

And the jury understands that they must decide this case on the evidence of the witnesses produced before them. It is simply my duty to see that the defendant has a fair trial, and to instruct the jury on the law.

Of the facts, gentlemen of the jury, you are the sole and supreme judges. No one else has any right to infer any facts from the testimony but you, and your inferences must be drawn from the testimony of the witnesses.

MR. WARE: I respectfully except to the remarks of your Honor prior to the remarks which you have just addressed to the jury.

THE COURT: Well, your exception is noted. And now, if there is any further instruction you would like to have given to the jury, I will give it to them.

BY MR. WARE:

Q Have you a cousin called "Checkers"?

A No, sir.

Q Or "Check as"?

A No, sir.

Q Do you remember telling any one that, if Izzy Presser hadn't told the officers where Berger lived, where you lived,

after the shooting, that neither Izzy Presser nor Harry Goldberg would have had any trouble whatever?

A No, sir.

Q You didn't say that?

A No, sir.

Q To anybody?

A No, sir.

Q You have testified in regard to a gambling house on Forsythe Street, or Eldridge Street?

A Eldridge Street.

Q And about the pool room---where was that located?

A Stanton and Allen Street.

Q Did you have any place where criminals congregated, that you called either a pool room or gambling room, at Stanton and Rivington Streets?

A No, sir.

THE COURT: Those are parallel streets.

BY MR. WARE:

Q Well, either on Stanton or Rivington Streets?

A No, sir, I did not.

BY THE COURT:

Q Didn't you say that the pool room was at Stanton and Allen?

A Yes, sir; but he said different.

BY MR. WARE:

Q Well, tell us whether you had any other place at any time?

A No, sir; I didn't have any other place.

Q Do you know a hardware store on Norfolk Street, between Rivington and Stanton?

A No, sir.

Q Do you remember committing a burglary there, on the night of the Jewish New Year, last Fall?

A I don't remember anything

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of the sort.

Q Eh?

A No, sir.

Q You didn't go to that hardware store with Joe Berger and Izzy Presser --- I mean with Presser and Hymie Kornblatt?

A No, sir.

Q You never heard of a hardware store at that place?

A I heard of it. And Izzy Presser's defense was that he and Kornblatt robbed that place, and now he is trying to put up the defense that I robbed it with him.

Q Weren't you ever with Izzy Presser and Hyman Kornblatt; didn't you ever have a meeting together?

A Once.

Q And what was the object of that meeting?

A Izzy Presser was going to kill Hymie Kornblatt, if he testified against Ripstein, and I was with him at the time.

Q Well, what were you doing with him at the time?

A He asked me to take a walk with him, and I did.

Q Well, you knew all about it, didn't you?

A Yes.

Q And you knew how Ripstein had come to be convicted, didn't you?

A Yes, sir.

Q And you have contributed towards Ripstein's defense, haven't you?

MR. EDWARDS: Objected to as immaterial, irrelevant and incompetent, and as repetition.

THE COURT: I will exclude it, as repetition. It has been, all gone over.

BY MR. WARE:

Q Did Rubenstein know anything about that meeting?

A I don't remember.

Q He wasn't present, was he?

A No, sir.

Q Do you know Officer Otto Rafael?

A I do.

Q Now, do you remember seeing Otto Rafael on the day of the shooting of Rubenstein?

A Yes, sir.

Q Where did you see him if you remember?

A He arrested me.

Q Where did you see him before he arrested you?

A He passed Eldridge Street.

Q About what time?

A About four o'clock.

Q In the afternoon?

A Yes, sir.

Q You had been cut about 3:30?

A Yes, sir.

Q Why didn't you speak to Officer Rafael about the cutting?

A I didn't know that he was an officer until I was arrested. He told me that he saw me on Eldridge and Stanton Street, cut. When he passed, I didn't know he was an officer.

Q About what time of the day were you cut?

A About 3:30 in the afternoon.

Q And where was the location you were cut?

A On Stanton and Eldridge Street.

Q That was a very populous part of the East Side? People going up and down all the time?

A Yes, sir.

Q Is there an officer there on fixed post?

A No, sir.

Q Was there any officer in sight at the time you were out?

A No, sir.

Q And what time were you arrested, charged with the killing of Rubenstein?

A About ten or ten thirty P.M.

Q That same night?

A The following night.

BY THE COURT:

Q That is, the night after the killing, you mean?

A Yes, sir.

BY MR. WARE:

Q The night after the killing, is that right?

A Yes, sir.

Q Were you present at the killing, at the time Rubenstein was killed?

A No, sir.

Q Where were you?

A Up in "Katzy's" flat.

Q Who do you mean by "Katzy"?

A One of the fellows from the crowd, "Katzy" we called him.

Q He is married, isn't he?

A I don't know. I know he is living with a woman.

Q "Katzy" was one of the gang?

A Yes, that's right.

Q He was known as "Katzy"?

A Yes, sir.

Q Did you ever speak to any police officer between the time that you were out by Rubenstein and the time you were arrested, about Rubenstein having cut you with a knife?

A No, sir.

Q Eh?

A No, sir.

Q You believe in getting even yourself in those matters,

if you have been assaulted by anybody, don't you?

A No, sir.

Q Well, what other fight, if any, had you ever had with Rubenstein?

A I had a fight once, up in Mack's Grosser's barber shop, at 67 Stanton Street.

Q And that was about two or three weeks before Rubenstein was killed?

A It was more than that, it was about five or six weeks.

Q And what was that fight about?

A Morris Rubenstein come there to me, and says to me that he just got the complainant who was the complainant against Izzy Presser, and he told me the complainant wants seventy-five dollars to go to Buenos Ayres, and he asks me to put up about twenty-five dollars, and a fellow named "Yarde" to put up twenty-five dollars, and we will get back twenty five dollars off Mr. Horowitz, the lawyer, and he won't have to fight the case. And I went up, the following night, and asked Mr. Horowitz for the twenty-five dollars, and I told this Morris Rubenstein that my father ain't keeping a store just now, and I ain't doing nothing, and it will be hard for me to get the twenty-five dollars, and he says I will have to get it, and he was going to cut me, and people in the place stopped him.

Q Well, how is it that you contributed these sums for the defense of these different people, if you had nothing to do with them, and if you don't travel with them and have nothing to do with the crimes committed by them?

A I did travel with them at

time.

Q And you have been travelling with them for a year, haven't you?

A Since last September.

Q Yes, about a year?

A Yes.

Q It wasn't until last September that you went with those men?

A No, sir.

Q You say you have known Goldberg for eight or ten years; how long?

A Eight or ten years, but never palled with him until then.

Q Well, didn't you know that Goldberg, had always worked hard for a living?

A No, sir

Q What?

A No, sir.

Q Don't you know that he used to work for a laundry, and delivered laundry regularly?

A That was while he was on parole. He had just come out of Elmira Reformatory, and was working then while he was on parole.

Q You didn't have anything to do about sending him to Elmira, did you?

A No, sir.

Q Don't you know, before he went to Elmira, to Elmira Reformatory, he had worked hard for a living, regularly?

A No, sir.

Q You had known him for eight or ten years, you say?

A Yes, sir.

Q Who was this Charles Landers you have spoken of?

A A detective in the New York Police Department.

Q You know him, don't you?

A Yes.

Q Did you see him arrest Izzy Presser, on November 5th, 191\* while he was walking with Rubenstein on Eldridge Street? Between Rivington and Stanton?

A I didn't see him, but afterwards, after he was arrested, I was told he was arrested by Charlie Landers.

Q And you went with Izzy Presser to Police Headquarters, didn't you?

A No, sir. Morris Rubenstein went with him. That's what I heard. I heard that they went along with Detective Landers, Charlie Landers.

Q And you saw Landers that same day?

A No, sir.

Q When was it that you gave Landers five dollars to give to Presser?

A I give five dollars?

Q Yes. Why, you frequently give to people that need the money, don't you?

A No, sir.

BY THE COURT:

Q Did you give Landers five dollars for Presser?

A No, sir.

BY MR. WARE:

Q Do you know Mike Muldoon?

A Mike Muldoon?

Q Yes, Did you ever hear of him?

A No, sir.

Q Were you present when Rubenstein gave five dollars to Landers?

A No, sir.

Q For Presser?

A No, sir.

Q Don't you know that Rubenstein and Presser and Goldberg

have been friends right along, ever since you have known them?

A Until the break came, yes. We were all the best of friends.

Q Well, what do you mean by the break? The shooting of Rubenstein?

A No, sir. Until they found out that Rubenstein was a "rat" and that he made a play for Izzy Presser's woman.

Q Do you know that Morris Rubenstein made a play for Izzy Presser's woman?

A I heard it.

MR. WARE: Now, I ask that that be stricken out.

THE COURT: The motion is denied. The question is answered. Now, put another question. It is immaterial whether he did or not. You are bound by his answer on these collateral questions.

MR. WARE: Well, that isn't an answer. He said that he heard it.

THE COURT: Well, the sources of knowledge are such that we cannot consider that now. That is a metaphysical question. That is the great trouble about questions of this kind that you ask him. You ask for his opinion. Probably he may have his opinion about things, but it is not legal evidence.

BY MR. WARE:

Q Now, of course, you remember when Ripstein was in the Tombs, don't you?

A Yes.

Q You sent him seventy-five dollars at one time, didn't you?

A Where am I going to get all that money to send?

MR. WARE: Now, I ask that he be directed to answer the question.

THE COURT: Just answer the question.

BY THE COURT:

Q Did you send Ripstein seventy-five dollars?

A No, sir. This is ridiculous.

Q Yes or no?

A No, sir; I didn't.

BY MR. WARE:

Q Now, you say you never sent Ripstein any money in the Tombs?

A That's what I said.

Q But you did send Money to Mr. Horowitz, or bring it to him?

A I did.

Q Then why is it ridiculous when I ask you if you sent it to him in the Tombs.

MR. EDWARDS: I object.

THE COURT: I will exclude it.

BY MR. WARE:

Q You collected money for Ripstein, didn't you?

A Yes, sir.

MR. EDWARD: I object to that, as repetition.

THE COURT: I will allow him to ask it again, if it has been asked, and I think it has.

BY MR. WARE:

Q You know Walter Friedlander, the lawyer, don't you?

A Yes, sir.

Q And you retained him to defend Ripstein, didn't you?

A Yes.

Q Was that in connection with the same case? The case we have been just talking about, where I asked you whether you sent seventy-five dollars to Ripstein in the Tombs?

A In connection with the same case, but in the Magistrates' Court.

Q Do you remember a conversation between yourself, Barnett Patlin, "Katzy" and others, and Presser, that you said to Presser not to ham Rubenstein?

A What's that?

Q Did you say to Presser not to harm Rubenstein?

A Yes, sir.

Q When was that conversation?

A After I was cut.

Q And where was it?

A On Eldridge Street.

Q You said that Henry Goldberg, this defendant, took no part in that conversation?

A Sir?

Q You told the District Attorney that Goldberg took no part in that conversation, or any other conversation, except in one or two minor instances; is that correct?

A He took part in that conversation. He was there. He was on the opposite side from the barber shop at 208 Eldridge Street, when I told Izzy Presser not to harm Rubenstein, and that I was cut, that day.

Q Was that in Grosser's barber shop?

A No; I said it was 208 Eldridge Street, on the opposite side of the street.

Q Was there anybody in front of that place at that time? When that conversation was had? Any police officer?

A No, sir.

Q Are you sure of that?

A Yes, sir.

BY THE COURT:

Q Where was the conversation had?

A It was on the street, opposite the barber shop, in front of a tenement house.

Q And who was present at the conversation, do you say?

A Izzy Presser, "Dutch", "Katzy" and his wife, myself, and I think Barney Patlin was also there.

Q All standing on the street?

A Yes, sir.

BY MR. WARE:

Q Was Barney Lewis there?

A Yes, sir; Barney Lewis.

Q Did Presser come there and was Goldberg there with Lewis?

A Yes.

Q Did you ever carry a gun?

A Never.

Q You have seen guns, I suppose? Among your customers in the pool room?

A No, I have seen them amongst "Dutch" and Izzy Presser and Barney Lewis.

Q Certainly.

A But never handled them myself, though.

Q Well, where were you when you saw these guns?

A We were up at the barber shop. They went over to Brooklyn to do some stick-up job then, and that's the time I saw them.

Q At the very time of this conversation you have told us about?

A No, that was before Morris Rubenstein was killed.

Q And you never carried one?

A No, sir.

Q But you belonged to the gang, didn't you?

A I did.

Q And do you know how you came to be arrested, why you were arrested, in connection with this case?

A Yes, sir.

Q Well, tell us.

THE COURT: Well, that is only his opinion, Mr. Ware, of why he was arrested.

MR. WARE: I'll take it, sir.

A Then Izzy Presser told me that there was a couple of detectives around looking for me, and the cops believed I killed "Moiche", and then, that night, I was arrested by the detectives.

Q In your father's house?

A Yes, sir.

Q Where did you first hear that Rubenstein was killed?

A Up in Katzy's flat.

Q When?

A Between 10 and 10:30 P.M.

Q On the night that it happened?

A Yes.

Q And that was the same day that your face had been cut?

A Yes.

Q Who was present at the time you heard it?

A There was Mr. and Mrs. Katz, Mr. and Mrs. Gorden, Barney Lewis, "Dutch" myself and Izzy Presser.

Q Was Goldberg there?

A Yes.

Q And when you say "Dutch" you mean Goldberg, is that right?

A Yes, sir.

Q And you knew, of course, that you would be accused of committing the crime, of doing the shooting, didn't you?

A I don't understand.

Q Well, you knew that you would be accused of shooting

Rubenstein, didn't you?

A I knew I would be accused?

Q Yes?

A Why, no, how did I know?

Q Well, you knew that he had cut your face, that afternoon?

A Yes, sir .

Q And you knew that was a pretty good reason for shooting him, did you?

A No, sir.

Q Did you know, who shot him, of your own knowledge?

A I knew, after they told me up in the flat who shot him.

Q Are you sure that they told you at the flat?

A Positively sure.

Q Do you say that you went with Goldberg, that night, after you left that flat?

A No, sir.

Q Who did you go with, and where and when?

A I slept that night, in that flat, and didn't go down from that flat.

Q Who did you sleep with?

A I slept with Mr. and Mrs. Katz, in the bed room --- with Mr. and Mrs. Gordon, at least.

Q Well, which is it? Are they the same person?

A Mr. and Mrs. Gordon.

Q Well, who are Mr. and Mrs. Gordon?

A They shared the flat with Mr. and Mrs. Katz.

Q And were they there that night?

A Yes, sir.

Q And at what time did Goldberg & and Presser leave that flat that night, according to your statement?

A About eleven thirty

Q And there were others there besides Mr. and Mrs. Katz and Mr. and Mrs. Gordon, Presser, Goldberg and yourself, weren't

there? Who else was there?

A Barney Lewis.

Q What time did he leave, if at all?

A He slept there all night, with Mr. and Mrs. Katz.

Q Nobody else there at the time of the conversation?

A No, sir.

Q Did you sleep there that night?

A Yes, sir.

Q What did you do, the next morning?

A Got up and dressed myself.

Q Well, what else did you do, besides that, after that?

A Barney Lewis and I went down to Third Avenue and down the Bowery and through Rivington Street to the barber shop at 308 Eldridge Street.

Q And who did you see there, if anybody?

A Mr. Pullberg, the boss.

Q What is 208 Eldridge Street?

A That's where the barber shop is.

Q It is a barber shop?

A Yes, sir.

Q Where, is Max Grouser's barber shop?

A 67 Stanton Street.

Q Now, what time was this you got to 208 Eldridge Street?

A About twelve or one o'clock in the day time.

Q Well, what did you do? Did you stay there any length of time?

A I come up there, and he says to me that Izzy Presser---

Q Who said that?

A Harry Pullberg said that. He said

that Izzy Presser was Just there, and he told the boss, Harry Pullberg, that, in case I come up there, that he should tell me that he wants to see me, and he will be on the corner of Houston and Eldridge Street.

Q Well, did you go there?

A Yes.

Q And what happened then?

A Izzy Presser asked me where I lived, and I told him, and he said, "There was a couple of detectives looking for you".

Q Where did you live?

A 325 East 120th Street.

Q With your father?

A With my parent's.

Q And how long was it since you had been there, to what address?

A Sir?

Q How long before this had you been at that address to sleep?

A To sleep?

Q Yes?

A Well, the night that this murder happened, I slept in Katzy's flat And the night before I slept in the Turkish Eath in First Avenue and the night before that I slept home.

Q At home?

A Yes, sir.

Q Had Goldberg or Presser ever been at your home at 120th Street?

A, Never.

Q At your home?

A Never.

Q Didn't they know where you lived, at home?

A No, sir.

Q Or where your lather lived?

A No, sir; they knew I lived in Harlem, but the address and street they didn't know.

Q Well, you had spent practically your whole time down on

the lower East Side, with the rest of the gang, for the eight or nine months prior to that, hadn't you?

A Yes, sir.

Q And nobody knew --- none of those people knew where you lived in Harlem, or where your father lived?

A Barney Lewis knew, because I used to go home with him, because he lived on 119th and I on 120th Street.

Q Did you go to see Presser, that day after the shooting?

A Yes, I went where the barber sent me, and I---

Q Where was Goldberg when you got there? Was he there?

A He sent me up to Goldberg's room in Forsyth Street, and I met Goldberg, sleeping, up there in bed.

Q What was the number?

A 215.

Q 215 Forsyth Street?

A Yes, sir.

Q Do you mean to say he lived there?

A Yes.

Q Had you ever been there before?

A Yes.

Q When?

A A few times before that day. He shared that room with a fellow by the name of "Beak", and I was up there a few times before that.

Q Now, how long did you stay at Goldberg's room, as you say, that afternoon?

A I stayed there until my brother come down and then we took the car together and went home, the Second Avenue car.

Q What time was that?

A That was about four or half past three --- between half past three and four --- something like that.

A In the afternoon?

A In the afternoon.

Q Was your face in bandages?

A It was.

Q From the cuts?

A Yes.

Q Where did you have that cut dressed?

THE COURT: Which time? The first time, do you mean? It might have been dressed more than once.

BY MR. WARE:

Q Where you have it dressed first?

A I got it dressed at Dr. Yaeger's.

BY THE COURT:

Q When you were cut, in the afternoon, you had it dressed by that doctor?

A Yes, sir.

BY MR. WARE:

Q Where is his place?

A On Eldridge Street, near Stanton, I don't know the number.

Q Did he ask you who cut you?

A Yes.

Q Did you tell him?

A No, sir.

Q Did you tell him that you got it in any other way than that Rubenstein had cut you?

A I told him I didn't know who cut me.

Q But you did know who cut you, didn't you?

A Yes.

Q You didn't feel very friendly towards the man that cut you, did you?

A No, sir.

Q Did you get your wound dressed again by anybody, after you left Dr. Yaeger?

A In the Tombs, by the Tombs! physician.

Q When was that? Two days later?

A I can't remember

exactly. It was in that week that I was arrested.

Q As soon as you got to the Tombs?

A Yes, sir.

BY THE COURT:

Q After you were arrested?

A Yes, sir; about that week, some time or another. I just can't remember.

BY MR. WARE:

Q Well, how long did you remain in the Tombs?

A About seven or eight weeks.

Q Do you know what you were there for?

A Yes.

Q What were you there for?

A On a charge of murder.

Q And you know Mr. Blank, don't you?

A I do.

Q About how long after you were taken to the Tombs did she identify you?

MR. EDWARDS: I object to that.

THE COURT: Sustained.

MR. WARE: It is cross examination, if your Honor please.

THE COURT: I know.

MR. WARE: I respectfully except.

BY MR. WARE:

Q Were you identified while you were at the Tombs? Or were you taken, for the purpose of being identified ---

THE COURT: Well, now, which question are you going to put?

Put one question at a time.

BY MR. WARE:

Q Were you identified by any one while you were at the

Tombs as the person who shot "Moiche" Rubenstein?

MR. EDWARDS: I object to that.

THE COURT: I will exclude that, as an improper question.

MR. WARE: Exception.

BY MR. WARE:

Q Were you taken any where out of the Tombs, or out on the corridor of the tier, in which your cell was, to be identified by anybody for any purpose?

A Yes.

Q You know what I mean by being identified, do you?

A Yes, sir.

Q Well, tell us what was done?

A There was about fifteen fellows put in a row and I was amongst them.

Q Where was the row?

A On the tier.

Q On the tier?

A Yes. There was about fifteen men put in a row, and I was amongst them, and Mrs. Blank identified me.

BY THE COURT:

Well, what did she do?

THE COURT: That is why I exclude the question, because it was a conclusion.

BY MR. WARE:

Q Yes, what did she do?

A She identified me.

BY THE COURT:

Q No. What did she do?

A She put her hand on me.

Q Well, what was said

A She just put her hand on me.

Q Well, was anything said?

A She just put her hand on me.

Q But was anything said there by any keeper or anybody else?

A I think the Assistant Warden was there, and he just hollered, "Identified".

Q Did he use the word "Identified"?

A Yes, sir.

Q And she put her hand on you?

A Yes, sir.

BY MR. WARE:

Q Well, there were three keepers there, the Deputy Warden and two other keepers, were there not?

A I don't remember. I know the Deputy Warden was there.

Q And you were one of the fifteen or so on line, were you not?

A Yes, sir.

Q And Mrs. Blank came right over and picked you out, didn't she?

A She did.

Q Did you hear what was said to her, if anything, by the Deputy Warden or any one else?

A No, sir.

Q Did you hear anything that she said to the Deputy Warden or anybody else there?

A No, sir.

Q She put her hand on you, did she?

A Yes, sir.

Q And what did she say then?

A She didn't say anything. But, when she put her hand on me, I started crying..

Q Why?

A Because she identified me, and I didn't know for what, and I knew I was innocent of anything that she could identify me for.

Q Don't you know that she identified you as the man that she saw fire the shot into Rubenstein?

A I had my suspicions, but I didn't know.

Q Well, why did you suspect?

A Because she put her hand on me, and I knew, if anybody come up and identified me, it wouldn't be for anything else.

Q You knew that you were there, charged with the murder of Rubenstein?

A Yes.

Q And, if anybody picked you out, it was because they accused you of having murdered Rubenstein?

A That's what I thought.

Q Yes, that's right. And did you see Mrs. Blank on the night of the shooting?

A No, sir.

Q When had you seen her last?

A Oh, I don't remember when I saw her last; may be months ago.

THE COURT: Do you mean prior to the shooting?

MR. WARE: Yes, sir.

A May be months ago; I don't remember exactly.

BY MR. WARE:

Q Do you know members of the Blank family?

A Yes.

Q Are they members of the gang?

A They were.

Q Have you seen them lately?

A No, sir.

Q Eh?

A No, sir.

Q Didn't you see them Saturday?

THE COURT: Which Saturday?

MR. WARE: Saturday last.

BY MR. WARE:

Q Day before yesterday, Saturday last?

A No, sir; I saw them up here in the corridor on Friday, one of the Blanks and Mrs. Blank.

Q And did you talk with them?

A And I saw them up here, to-day. .

Q And you talked with them?

A I talked to Mrs. Blank.

Q And you know that she is using to be a witness for the prosecution, don't you?

A I heard she was.

Q Do you know why she came to change her mind, since the time she picked you out in the Tombs?

MR. EDWARDS: I object to that, as calling for the conclusion of the witness.

THE COURT: I sustain the objection. There is no evidence that she has changed her mind.

MR. WARE: Not yet.

THE COURT: Besides, it would be speculative, and calling for the operation of somebody else's mind.

BY MR. WARE:

Q Did you see any one of the Blanks at Mr. Deuel's office, or the District Attorney's Office, in this building, at any time?

A I saw Morris Blank up in Room 8, last week, some day.

Q Who was there besides Morris Blank?

A Just him and I and my father was sitting there, talking.

Q Waiting to talk to one of the District Attorneys?

A No, sir.

Q What were you waiting for?

A To come down and testify.

Q Had you ever had any conversations with any members of the District Attorney's Office, before the time that you have told us about, when Mrs. Blank came to the Tombs and picked you out, put her hand on you when there were fifteen men in line. Had you ever been to the District Attorney's Office before that?

A No, sir.

BY THE COURT:

Q Well, when was that?

BY MR. WARE:

Q When was that, do you know?

A When was what?

Q The identification you claim took place, or the picking out of you by Mrs. Blank at the Tombs?

A It was during that week that I was arrested; the first week that I was arrested.

BY THE COURT:

Q Well, when was that? Do you remember the day that you were arrested?

A It was on a Friday night that I was arrested.

Q I don't mean the day of the week but of the month?

A It was about March 12th that I was arrested.

BY MR. WARE:

Q Well, it was on about March 13th.

MR. EDWARDS: It was the night between the 12th and 13th,

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I think.

BY MR. WARE:

Q Well, it was the same night that you saw Mr. Deuel at Police Headquarters, that you were identified, as you say, by Mrs. Blank at the Tombs?

A The same day?

Q That is, you saw Mr. Deuel at Headquarters?

A I don't, remember. I know it was some day that week, a few days after I was arrested.

Q Did you have any conversation with Mr. Deuel?

A Yes, he asked me for a statement.

Q Did you have any conversation with him?

A Yes, sir.

THE COURT: Now, you can have the conversation if you want it.

MR. WARE: I air not asking for it. Mr. Deuel will probably supply that.

BY MR. WARE:

Q Don't you know that it was the same day, in the day time, that you were picked out by Mrs. Blank, the same day that, at 1:30, you had had a conversation with Mr. Deuel at Headquarters?

A I couldn't say for sure. It might have been that day of a day or two later.

BY THE COURT:

Q Well, which came first?

A I saw Mr. Deuel first, and then, a day or two later, Mrs. Blank came and identified me.

BY MR. WARE:

Q Well, after she had picked you out at the Tombs, did you communicate with the District Attorney?

A Yes, sir.

Q What did you do? Write a letter to him?

A Yes, sir.

Q And did you come over here, to this building, to see the District Attorney?

A Yes.

Q And you saw Mr. Deuel in his office?

A No, sir.

Q Whom did you see?

A Mr. Breckenridge.

Q Mr. Breckenridge?

A Yes, sir.

Q And you had one or more conversations, if you remember, with MR. Breckenridge?

A Quite a few.

Q About how many did you have with him, before you saw Mr. Deuel?

A About three or four.

BY THE COURT:

Q Now, those were on different days, were they not?

MR. WARE: Well, I mean that.

BY THE COURT:

Q You came to the District Attorney's office, on different days, didn't you?

A Yes, sir.

BY MR. WARE:

Q On different days, wasn't it?

A Yes, sir.

Q And in the mean time you were staying at the Tombs eight or nine weeks?

A Yes.

Q Do you remember anybody coming to see you at the Tombs in regard to this case?

A Yes.

Q Who were they?

A Katzy was up once, and Abie Hersch-

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kowitz was up once.

Q Do you remember any conversation you had with Herschkowitz in regard to this case?

A Yes, sir.

Q Do you know a man who was in the Tombs next to your cell named Herschkowitz?

A Herschkowitz?

Q Yes. Named Muldoon, I mean?

THE COURT: You mean in the next cell to him in the Tombs?

MR. WARE: Yes, sir.

A No, sir.

BY THE COURT:

Q What was the number of your cell?

A 204.

Q Anybody in that cell with you?

A Yes, sir; Benny Schneider was in there with me.

BY MR. FARE;

Q That is, on the second tier?

A Yes, sir.

Q Schneider who was in your cell with you is known as "Benny Nigger"?

A Yes, sir.

Q Well, he is the man ---

MR. EDWARDS: I object to that, if your Honor please, as immaterial, anything about his cell mate.

THE COURT: I don't think that the association was voluntary, Mr.

Ware.

Mr. WARE: Oh, not at all.

THE COURT: And, besides, it was after the killing, and Schneider could not be charged with complicity in it, could he?

MR. WARE: Oh, no, sir.

BY MR. WARE:

Q You don't know who was in the cell next to you, do you?

A There are so many there, I can't recall.

BY THE COURT:

Q Then you don't recall?

A No, sir.

BY MR. WARE:

Q Now, do you know Barney Lewis?

A Yes.

Q Do you remember writing a letter to him?

A No, sir.

Q Do you mean to say you didn't write a letter to him?

A That's what I mean to say.

Q You never wrote a letter to him?

A No, sir.

Q Did you ever tell Barney Lewis --- did you ever write a letter to Barney Lewis, which contained this statement ---

MR. EDWARDS: Now, I object to this being read. I submit it should be shown to the witness.

THE COURT: Well, he has the right to ask him the question. He says he never wrote any letter to Barney Lewis, but may be this will refresh his recollection. I will allow it for that purpose.

Mr. EDWARDS: But he may show him the writing, to do that.

BY MR. WARE:

Q This is what I want you to say, and alibi me, and corroborate me in my story, as my people will stick to you. So, Barney, listen. This is what I want you to say, and this is

the statement I made in Police Headquarters." By the way, do you know whether or not Barney Lewis was in Police Headquarters?

A I don't know.

Q You were; weren't you?

A Yes.

Q "When you are called in my case as a witness, this is the statement I made in Police Headquarters. I was coming from the barber shop, going north, when I met you on the northwest corner of Eldridge Street, and I stopped you, and we were in a conversation about five or ten minutes, when the drug store man called you, and you were leaving me, and were going to the drug store, and I hollered, 'Barney, I'm cut' and I fell in your arms, and you took me to the drug store on the northwest corner of Eldridge Street, and you told the drug store man to ring up for an ambulance, and he told you to go to Dr. Yaeger, just two doors from the drug store, and you went to call Dr. Yaeger to the drug store, but he told you to bring me up to his office. He treated my face, and gave me fifteen stitches. After I was bandaged up, the time was then about Four o'clock in the afternoon. We walked over to Stanton and Eldridge Street. We stood there about five or ten minutes, trying to get information who cut me. As we didn't get any information, we went to the barber shop at 208 Eldridge Street, and we stood there until about five o'clock, and from there we went to a moving picture show on Christie and Houston Street, which they call the Winter Garden. We remained there until seven o'clock in the evening, and from

there we walked straight down Houston Street over to First Street Station, and took Second Avenue train for home. Got off at 121st Street and Second, Avenue and walked right up to my house. When we got home, the time was twenty minutes to eight in the evening. When you came home with me you found my father and mother and three sisters home. As soon as my mother seen the bandage on my face, she fainted. And you sat down and told my parents how it happened, by telling them, "It isn't as bad as they make out." So we sat talking until about half past ten, and I asked you to sleep with me, to cheer up my parents, and you consented. You and I slept in one room until the following morning. We got up about ten o'clock in the morning, and we took a Second Avenue elevator train for downtown. As I got off at First Street Station, we walked right over to Houston Street. I started to feel bad. So I went to Ratner's Restaurant, for a hot glass of milk, and you left me there, and went to the barber shop."

THE WITNESS: Can I look at that letter, please, your Honor?

BY THE COURT:

Q Well, does the reading of it refresh your recollection?

A It refreshes my recollection the way I never wrote that letter, or never wrote any letter whatever, but that was my 'phoney' alibi before I told the District Attorney the truth.

MR. EDWARDS: May we have the paper marked for identification? So that there may be no confusion about it hereafter?

THE COURT: Yes.

(It is marked Defendant's Exhibit A for Identification).

THE COURT: Now, if you wish to show him the letter, and ask him whether he wrote it or riot, you may do so.

MR. WARE: Well, that's what I wanted to speak to your Honor about.

THE COURT: Well, I don't want to be consulted about anything. I'm only telling you your rights. He says that he did not write any letter, but that he made those statements, but not in a letter.

BY MR. WARE:

Q Barney Lewis and Barney Ginsberg are one and the same person, aren't they?

A Yes, sir.

Q When did you see him last?

A I saw him up at the District Attorney's Office, a few weeks ago.

Q He knew about this phoney alibi, didn't he?

A Yes.

Q You told him about it?

A Yes, sir.

Q Well, now, why did you invent what you call a phoney alibi, if you had nothing to do with shooting Rubenstein?

A Because I didn't want to see them be convicted through any testimony of mine.

Q Why, don't you know that the best and the proper thing was to tell the truth?

A Well, that's what I'm doing now. With the advice of my father, I done that.

Q And so that you didn't tell the truth until you thought

it was to your benefit to do so?

A I told the truth with the advice of my father, and, if my father wouldn't tell me, I wouldn't tell the truth yet.

Q At the time you were cut by Rubenstein, that afternoon, why didn't you go home to your father and mother, where you lived?

A Because I was ashamed to go home with that bandage on my face.

Q You didn't know but what it might be a serious wound, did you?

A Sir?

Q (Question repeated). Or might be fatal?

A What do you mean by fatal? It was ill sewed up.

Q Weil, but you might die from it?

A Well, it was all sewed up at that time.

Q Well, you know that a mere wound or cut may be infected and may result in the death of the person cut, don't you?

A Well, this didn't seem that way, but not far from it, though.

Q Well, when did you tell your father and mother about being cut?

A The following night, when I went home.

Q When you went home?

A Yes, certainly.

Q When did you go home?

A The following night.

Q When were you arrested?

A At my home, the following day.

Q The following night, you were arrested?

A I was arrested the following night. I went home the following day.

Q And how long were you home when you were arrested?

A I

was at home from half past five, and I was arrested about ten thirty.

Q For how many weeks was it that this phoney alibi, as you call it, was going to be your defense, at the Tombs, if you came to trial?

A I couldn't say exactly; from about two to four weeks.

Q So that, if you were put on trial for the murder of Rubenstein, the story which I have just read was going to be the story which you were going to tell the jury, was it not?

A Yes, sir.

Q And you were going on the stand, just as you are now, and swear to that story?

A Yes, sir.

Q Which story is true; that story which you were going to swear to, or this story which you are now swearing to?

A The one I'm swearing to now.

Q It is greatly to your benefit, if this jury believes the story that you are telling now, is it not?

A What benefit is it to me?

Q Why, it will save you from the chair?

A What are they going to give me the chair for?

Q For shooting Rubenstein?

A No, they don't give anybody the chair that is innocent, in New York State or in the United States.

Q Well, if you are guilty, you are to be convicted?

A Yes, anybody that is guilty of anything, I believe, should be con-

victed.

Q How many people did you tell this Phoney alibi to?

A The whole crowd knew it.

Q They all knew that that was the story that you were going to tell?

A Yes; and, in fact, Izzy Presser gave me the alibi, the story I was to tell, so and so.

Q Well, he invented that, did he?

A Yes.

Q And who invented the story that you are telling now?

A Who invented it?

Q Yes?

A Nobody. It's natural.

Q It's as natural as the first one, is it not?

A Just as natural as everything that I am telling now; everything is natural that I am telling now.

BY THE COURT:

Q Well, by "natural" you mean that it is true, do you?

A Yes, I am telling, everything that happened, everything that is true. I am telling the truth.

BY MR. WARE :

Q How long have you been in the House of Detention?

A About ninety days.

Q About ninety days?

A Yes, sir.

Q And how much a day are you getting paid for the time that you are staying there?

A Three dollars a day.

Q And at the time you were cut by Rubenstein, at about 3:30 on the day that he was killed, did you try to borrow a gun from

anybody?

A No, sir.

Q Right away afterwards?

A No, sir.

Q Didn't you ask anybody for a gun, so that you might get square with that fellow?

A No, sir.

Q Didn't you actually borrow a gun?

A No, sir.

Q You didn't feel very friendly towards him, as you say, did you?

A No, I don't think anybody would, after anybody cut them like that.

Q No. I agree with you there. And you know Sam Cohen, don't you?

A Sam Cohen?

Q Isn't it Sam Cohen? Don't you know anybody named Sam Cohen?

A Sam Cohen?

Q Yes?

A No, sir.

Q Well, do you know any Cohen?

A I know some Cohens, yes, sir.

Q There are a few over there, are there not

A Yes, sir; quite a few.

Q Now, do you know Sam?

A No, sir.

Q Sure?

A Unless---

BY MR. WARE:

Q Do you know Barnett Patlin, don't you?

A Yes, I know him.

THE COURT: Well, why drop Cohen? Why not find out about Cohen? He says he isn't sure, as I understand It, whether he knows him or not.

MR. WARE: Well, I will go further, then.

BY MR WARE:

Q Are you acquainted with anybody named Sam Cohen, who has been in the Tombs for the last two months?

A Could you describe him?

THE COURT: He has been out of the Tombs for three months, this witness, he says.

MR. WARE: Yes, sir; that's right. I forgot about that.

BY MR.WARE:

Q And you don't remember just now any Sam Cohen?

A No, sir.

Q Do you know anybody named Barney Patlin?

A Yes.

Q And you have known him for how long?

A Not very long. I know him since he used to come up to Max Grosser's, and I used to see him there and I met him there, since about last year.

Q Was he present at the time, in Max Grosser's, at the time of your fight with Rubenstein?

A He was.

Q Was he present when Rubenstein cut you, that afternoon?

A No, sir; but in the evening, I saw him.

Q What time?

A I went down from the barber shop about 8:30, and, when I come down he was on the opposite side, with Izzy Presser, "Dutch" and Katzy and his wife, and Barney Lewis.

Q About what time?

A Between eight and eight thirty P. M., I think it was.

Q And was that before Rubenstein was killed?

A It was.

Q How do you know that?

A Because I found out later, after I went to Katzy's flat.

Q And where were you standing?

A On the opposite side of 208 Eldridge Street, in the street.

Q In the street?

A On the sidewalk.

Q On the sidewalk?

A Yes, sir.

Q On the opposite sidewalk?

A Yes, on the opposite sidewalk.

Q And there was quite a crowd of you there, was there?

A Yes, sir.

Q And your face was all bandaged, was it not?

A Yes, sir.

Q And you told them, of course, how you came to get out, didn't you?

A They knew it.

Q They knew it?

A Yes.

Q Did you tell them prior to this meeting, or how did they know it, if you can tell?

A I told them prior, and they knew it from conversations heard.

Q It was known all over that neighborhood, wasn't it?

A It was common gossip on that street.

Q That Rubenstein had cut you?

A Yes.

Q And that you were looking for Rubenstein?

A No, not that I was looking for him, but that he cut me. It was common gossip that he had out me.

MR. WARE: That's all.

RE-DIRECT EXAMINATION BY MR.EDWARDS:

Q Now, Berger, you were held for the action of the Grand Jury, as you told us, weren't you?

A Yes, sir.

Q And the Grand Jury turned you out, didn't they?

A Yes, sir.

MR. WARE: I object to that, if your Honor please, to the expression, "turned you out". I don't believe the grand Jury turns anybody out. They may fail to indict.

MR. EDWARDS: We call them Grand Jury discharges, and, some times we call them "turn outs".

BY THE COURT:

Q Were you arraigned in Court and discharged?

A Yes, sir; by Judge Wadhams.

Q Well, the Grand Jury failed to indict?

A Yes, sir.

THENCOURT: Well, the regular procedure is, if the Grand Jury fails to find an indictment on a complaint, the so-called defendant is brought into Court, and identified, and allowed to go.

MR. EDWARDS: Yes, sir; and that was all done in this case.

MR. WARE: But I object to the language, "turned him out".

THE COURT: Yes, strike that out, and substitute---

MR. EDWARDS: The statement that we have now made?

THE COURT: Yes.

BY MR. EDWARDS:

Q Now, I show you this paper, Berger--- before you testified in that case you signed this paper, did you not?

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A Yes.

Q And was it sworn to before a Notary?

A Yes, sir.

MR. EDWARDS: I offer this paper in evidences. It is a waiver of immunity.

MR. WARE: If your Honor please, we object to the introduction of this document, because this is what is known practically as a waiver of immunity, and is a private agreement between the District Attorney and the witness.

THE COURT: Well, you inquired about the matter, did you not?

MR. WARE: No, sir; I don't think so. We object to it as entirely extraneous to the case against Goldberg, and merely a private agreement between the District Attorney and the witness.

MR. EDWARDS: No, sir; it is not. It is a waiver on the part of this witness of immunity from prosecution, so that we are able to prosecute him to-day, just as we have been all along, if we think it best.

BY MR. EDWARDS:

Q Did you waive immunity?

A Yes.

Q And did you understand that, if you waived immunity, you could be prosecuted any time for any crime?

A Yes, sir.

THE COURT: You asked him, 'Mr. Ware, on cross examination, if he had not received from the District Attorney some promise or inducement to testify, and that is why I allow this.

MR. WARE: We except to its introduction, we object, at least.

MR. EDWARDS: Then may it be marked for identification your Honor?

THE COURT: Yes.

(It is marked for identification People's Exhibit 4).

BY MR. EDWARDS:

Q When Mrs. Blank, at the Tombs, put her hand on you at the Tombs, did she say anything to you that you now recollect?

A No, sir.

Q Now, how long have you Known Mrs. Blank?

A She used to be a customer in our store. I know her for quite a number of years.

Q Yes, she used to be a customer in your father's store?

A Yes, sir.

Q Now, you stated, in answer to Mr. Ware's question, that you were getting three dollars a day for the time you have been in the House of Detention?

A Yes, sir.

Q What Judge committed you?

A Judge Wadhams.

Q And did he fix the rate of compensation at the time he committed you?

A Yes, sir.

MR. EDWARDS: That is all.

RE-CROSS EXAMINATION BY MR. WARE:

Q You say that Judge Wadhams fixed your compensation at three dollars a day?

A Yes, sir.

Q Did he ask you whether you worked for a living?

A Yes, sir.

Q And you told him you were working for your father?

A Yes, sir.

Q And that you made, --- that you received a salary of about three dollars a day from your father; is that right?

A Yes, sir.

Q You haven't received any such salary, have you?

A It is worth to my father ten dollars a day to have me with him.

Q But your father isn't in business, is he?

A Why ain't he?

Q Well, he wasn't during the past nine months?

THE COURT: Yes, but he has not been in the House of Detention for nine months: He says his father has a place of business in Rockaway, and he sold his New York Place, but he has had the Rockaway place.

BY THE COURT:

Q Now, when did he open the Rockaway place, this year? That is a summer resort, is it not?

A Yes, the early part of April.

BY MR. WARE:

Q Well, you didn't work for him there?

A No, sir; not at that time I wasn't working.

Q You were in the Tombs?

A Yes, I was in the Tombs.

Q Therefore you didn't work for your father since last September, did you?

A Exactly.

Q But you told Judge Wadhams that you had been making three dollars a day; wasn't that so?

A While I was working I was. I would make, some days a dollar a day and some times ten or fifteen dollars a day.

Q Now, I thought your father paid you by a check at the end of the season?

A Well, that's all right, I don't want no wages from my father. Whatever he made, I made, or just the other way.

Q Did you ever do any other work for anybody?

A Yes, for the Honest Ballot Association, at the Primaries. I worked as an "Honest Ballot" clerk. I worked at the Primaries and at the election.

Q When was that?

A Last year. And it was my first vote and I voted for them and worked for them.

Q Did you ever get three dollars a day in your life through anybody?

THE COURT: I think you have gone fully into that. His answer is that he did not get any wages, but that is his estimate of his worth to his father.

MR. WARE: That's all.

BY MR. EDWARDS:

Q And you were committed to the House of Detention after your father's business was opened?

A Yes, sir.

BY MR. WARE:

Q And prior to that time you had been in the Tombs?

A Yes, for two months.

Q And did you tell Judge Wadhams, at the time he asked you, at the time he fixed your compensation at three dollars a day --- what did you tell him in regard to your earnings?

A I didn't even talk to Judge Wadhams. I told the Clerk of the Court that I was working for my father, and the Clerk of the Court told his Honor, Mr. Wadhams.

THE COURT: Well, now, if Judge Wadhams was very liberal, how can this witness be blamed for taking the money?

MR. WARE: Yes, I think the point is well taken. I think he would take anything. That's all.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

---oooOooo---

AFTER RECESS.

LENA BLANK, of 183 Allen Street, a witness called on behalf of the People, being duly sworn and examined through the Official Interpreter, Mr. Fischer, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mrs. Blank, did you live at 183 Allen Street the day that Morris Rubenstein was shot?

A Yes, sir.

Q On that evening, did you have occasion to go out on the street?

A Yes, sir.

Q Did you see Rubenstein while you were on the street?

A Rubenstein came from Houston Street, and I came from my house.

Q Who was with Rubenstein when you saw him?

A Mr. Goldberg and Mr. Izzy Presser.

Q And anybody else?

A There was another man but I can't tell who he was.

Q Well, now, tell us just what you saw happen, when you saw those three men on the street?

A It was this way. It was on a Thursday evening. I and my daughter in law, we were sitting upstairs, and this Goldberg, this boy over there (Indicating the defendant) came in with Izzy Presser, and said, "Is 'Moiche' Rubenstein here?"

Q Yes. Now, go on from there.

A And my daughter in law said, "Why do you look Rubenstein?" Because he was angry at Rubenstein.

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

THE COURT: Strike that out.

BY MR. EDWARDS:

Q Well, is that what he said?

BY THE COURT:

Q What did your daughter in law say?

A My daughter in law said, "Why do you look for Rubenstein? You are angry with him." And then Izzy Presser said, "No, no." And then I saw Izzy Presser had a pistol in his pocket and I immediately followed him. I said, "Why do you look for Rubenstein?" And this defendant had no patience to stand there; he left before lazy, and to that Izzy Presser I talked a little.

Q Now, don't tell us what you said, to Izzy Presser. Now, after Izzy Presser and the defendant left your apartment, what did you do?

A After they both had left, then came "Moiche" Rubenstein. He came in my house.

Q Now, one moment. Did you have a talk with him then? Just yes or no?

A Yes.

Q Now, don't tell us what you said to him. But, later on in the evening, what did you do?

A He came in to me and I related to him ---

BY THE COURT:

Q Who came in to you?

A Rubenstein. And I told him two men had been looking for him.

MR. WARE: I object to that and move to strike that out.

MR. EDWARDS: I consent.

THE COURT: Strike that out.

BY MR. EDWARDS:

Q Well, what did you do next?

A Then I went downstairs to see what would happen downstairs.

MR. WARE: I ask to have that stricken out.

THE COURT: Yes, strike that out.

MR. EDWARDS: It stands that she went downstairs, only?

THE COURT: Yes.

BY MR. EDWARDS:

Q What time of the evening did you go downstairs?

A It might have been nine or half past nine.

Q Now, where did you go when you went downstairs?

A I went in Houston Street, in a delicatessen store, to buy something for a child.

Q Yes, and where did you go from there?

A I couldn't buy it even; I couldn't buy it, no.

Q Well, what did you see on the street, if anything?

A I stood still, and I saw the defendant get hold of Rubenstein by the hand (Illustrating). This defendant, he was the one who shot the first shot.

Q And then what happened?

Mr. WARE: I object that, if your Honor please. Let her state what happened.

THE COURT: Well, strike it out for the present.

BY MR. EDWARDS:

Q Did you see him fire that shot?

A Yes.

Q What did he have in his hand, if anything, when he fired?

A He had a pistol in his hand.

Q And then what happened to Rubenstein after he fired the shot?

A He fell on the ground.

Q Yes. Then what happened next?

A "Moiche" was a very strong man, and he was trying to get up again, but he couldn't do any more than go on his knees (Illustrating), and then Izzy Presser came there, and gave him two blows.

Q What do you mean by two blows?

A Twice more he shot. You could have torn the building apart with it.

THE COURT: Strike out the last part.

BY MR. EDWARDS:

Q Did you hear anything said by anybody?

A First, the defendant spoke to him.

Q What did he say?

A I don't understand no English. You know that I can't speak English, you see it. This boy here, this is the murderer, you see him there. (Indicating the defendant).

MR. WARE: I object to that, and move to strike that out, the word "murderer".

THE COURT: Yes, strike it out.

BY MR. EDWARDS:

Q Go on. A When this boy fell on his knees, he said, "That's enough."

Q When who fell on his knees?

A "Moiche" Rubenstein.

Q And where was the defendant Goldberg then?

A With Izzy Presser there.

Q Now, when Izzy Presser fired the next two shots, what did the defendant do?

A He went in the hall in 185 Alien , Street, and Izzy Presser went across the way.

Q Now, let us go back for a moment to the time when Rubenstein was on his knees. You say that Presser fired two more shots. What happened to Rubenstein?

A He fell down like a dog, after being shot.

Q Now, where was he when Presser fired the last shot?

A He fell to the ground.

Q Can you show us how Presser fired that last shot?

A The defendant first shot him in the stomach, and the other two shots I was really too much excited.

Q Well, which one ran away first, this defendant or Presser?

A The defendant.

Q And then what did you do after that?

A I went upstairs, and I was shaking.

Q Now, how long have you known this defendant Goldberg?

A About a year.

Q How long have you known Presser?

A Presser I know long, about two years.

Q Are you perfectly sure that this defendant and Presser were the two men that you saw shoot Rubenstein?

A I swear by God.

Q Was there any one else there who fixed any shots at all?

A There was another man there, but he didn't do anything.

Q Did you know him?

A I didn't know him.

MR. EDWARDS: That's all.

CROSS EXAMINATION BY MR. WARE:

Q Do you know the father and mother of Joe Berger?

A Yes, sir.

Q How long ago did you see them last?

A When they used to sit in Orchard Street I saw them, but lately I haven't seen them.

Q Haven't you seen them up in the District Attorney's office?

A Since this trial began I saw them, but not before that.

THE COURT: Do you mean the parents of the defendant?

MR. WARE: No, the father and mother of Joe Berger.

BY MR. WARE:

Q Now, how long ago did you see them? Was it last week?

A I saw him in Court since the trial has begun.

Q The father of Joe Berger, or Joe Berger?

A Old Joe Berger, I saw.

Q The father?

A Yes, sir.

Q And have you been down to Rockaway Beach to see him?

A No, sir.

Q And has he been to your house?

A No, he has nothing to do with my house.

Q Where have you seen him, outside of seeing him here in

Court?

A Nowhere else.

Q You haven't seen him in the District Attorney's Office?

Q Mrs. Blank, you know Joe Berger pretty well, don't you?

A Yes, I know him.

BY THE COURT:

Q The young Joe Berger?

A Yes, sir.

BY MR. WARE:

Q Yes, the young Joe Berger?

A Yes.

Q And you saw him at the Tombs the day after the shooting?

A I should worry. I did see him, yes.

Q Mrs. Blank, you went there to point out the man who shot Rubenstein, did you, at the Tombs?

A No, I didn't do that. But I said, "If you know who shot him you ought to say who shot him."

BY THE COURT:

Q Well, to whom did you say that?

A To everybody.

BY MR. WARE:

Q As a matter of fact you wasn't present at all when Rubenstein was shot, were you?

A Yes, I was there.

Q Haven't you told friends of yours that you were up in your own room at the time of the shooting?

A You tell the counsel that I am just as smart as he is. I can swear twenty times that what I am telling here is the truth.

Q Yes, you would swear to anything that you felt like swearing to, wouldn't you?

A No, sir. I want to swear that I stood

there.

THE COURT: Now, one minute, please. Tell her to listen to the questions, and answer them.

BY MR. WARE:

Q You remember going to the Coroner's Court at the time that there was an inquest as to who killed "Moiche" Rubenstein, don't you?

A Yes.

Q Do you remember what you testified to there?

A Yes, sir.

Q Do you remember being asked this question --- do you know Mr. Deuel?

A Yes, sir.

Q You have been up in his office a good many times, haven't you?

A Yes.

Q Do you remember at the Coroner's Inquest Mr. Deuel asking you this question:

"Q Which way were you walking? Up or down?" And your making this answer:

"A I Was going along Allen Street in a northerly direction towards Houston Street." Is that right?

A Yes, I went towards Houston.

Q Did you testify to this?

A I went towards Houston Street, and the boy came towards me.

Q "Q By Mr. Deuel: What did you see? A I saw three men come up to "Moiche".

THE COURT: Now, the only use you can make of the testimony

she gave there is to show that it differs from the testimony given here, and don't read all her testimony. So far there is no contradiction.

MR. WARE: Very well, then, I will skip that.

BY MR. WARE:

Q Do you remember this question? You had testified that you saw three men:

"Q Do you know who those three men were? -- that question wasn't answered --- "Do you know those? (Indicating three men)

A Yes.

"Q What are their names?

A One is Joe Berger, one is Izzy Presser and one is "Dutch", they call him.

Q That is his name?

A The only name I know is 'Dutch'?"

A I said that because I was afraid. They were outside.

Q Well, I haven't asked you any questions.

BY THE COURT:

Q Well, did she say it or not? Yes or no?

A Yes.

BY MR. WARE:

Q So, Mrs. Blank, did you tell the truth that time or not?

A Yes.

Q And those, were the three men that you saw?

MR. EDWARDS: No. I object to that. That doesn't appear in the testimony, either as he read it, or as it actually appears on the record.

THE COURT: No. One minute now. You can ask her if those

were the three men that she saw.

BY MR. WARE:

Q Were those the three men that you saw on the street, as you have described?

A This defendant and Izzy Presser and the other one I couldn't recognize.

THE COURT: Now, so far as I understand the Coroner's testimony there --- I haven't read it --- there is no statement that she said that she saw one of the three men on the street, but that there were three men in the Court Room there, indicating them, that she knew them. If there is any statement that Goldberg was there, let her say so.

MR. WARE: No, sir; he wasn't a defendant then at all, I understand, if your Honor please, and was not in the Court Room.

THE COURT: Then you will have to get the record straight. Any one who heard her testify may give testimony.

MR. WARE: The defendant wasn't there at all.

BY MR. WARE:

Q Who was present at the Coroner's Court?

THE COURT: If she knows.

A Joe Berger was there. The other one hadn't been arrested yet.

BY MR. WARE:

Q Were these three men in Court on trial?

A No, I didn't see. I don't know.

Q You saw Joe Berger though, didn't you?

THE COURT: In the Coroner's Court?

MR. WARE: In the Coroner's Court.

A Yes, sir.

BY MR. WARE:

Q Was Presser there?

A No, sir.

Q And Goldberg wasn't there either, was he?

A No, sir.

Q So, when you answered, One is Joe Berger, One is Izzy Presser and one is 'Dutch', you meant those were the three men that you saw on the night of the shooting?

A I tell you why I said that, because I was afraid of them.

Q And are you saying what you say now, because you are afraid of the District Attorney, or anybody else?

A No. Now they are in jail and I have no more fear for them.

Q Well, the District Attorney isn't in jail?

A I have no fear of the District Attorney.

Q Have you been paid by anybody to testify here the way you are doing now?

A No, I don't care for money.

Q You did testify, however, that of the three men that you saw that night, Joe Berger was one; is that true or not?

A I said it because I was afraid.

MR. WARE: I ask that the latter part of the answer be stricken out.

THE COURT: Strike it out.

BY MR. WARE:

Q You did so testify, didn't you?

A Yes.

Q Was it true or not?

A (No answer) :

BY THE COURT:

Q Was it true or not? Just answer the question.

A I don't know whether it was Joe Berger, or anybody else, but I know those two done the shooting.

Q Well, was it true that Joe Berger was there or not? That is what he asks you?

A I thought it was Joe Berger, but it was somebody else.

BY MR. WARE:

Q When did you discover that it was somebody else?

A I found out when they got the other one in Bayonne.

Q Whom did they catch in Bayonne?

A Izzy Presser.

Q Well, you knew Izzy Presser, didn't you?

A Yes.

Q And you knew Henry Goldberg, didn't you?

A Yes.

Q Before Bayonne?

A Yes.

Q Well, then, how about the third man? If he wasn't Joe Berger, who was he?

A I don't know him; I don't know. Why should I look for the third man?

Q You are very anxious to convict the two, aren't you, Izzy Presser and Henry Goldberg?

A Because they did it, therefore I look to them. The other one didn't do it.

MR. WARE: I ask that the first part of the answer be stricken out as not responsive.

THE COURT: Well, all of the answer is irresponsive. None of it is responsive. I will strike it all out.

BY MR. WARE:

Q Now, will you tell me why you have changed your mind since

the Coroner's Inquest about Joe Berger being one of the three?

A Am I to watch a lot of people? I am to watch only those that done the shooting.

Q Then at the Coroner's inquest, when they asked you the names of the three men, the first name you mentioned was Joe Berger, wasn't it?

A Because I was afraid. I said so. That's all.

Q You said Joe Berger because you was afraid of what?

A I wanted that Joe Berger should be a witness in the case; that's all.

Q So that you said that he was one of the three men that did the shooting, or was together with them at the time of the shooting?

A Because, as long as he hadn't done the shooting, he would surely say that they did the shooting.

Q Well, you knew that Joe Berger was before the Coroner, charged with the murder of Rubenstein, didn't you?

A (No answer).

THE COURT: Yes or no, tell her.

A No, I didn't know.

BY MR. WARE:

Q Well, Berger was there on trial, wasn't he?

THE COURT: Well, now, you have brought that out, that he was the only one there, and the others were not there.

A Yes.

BY MR. WARE:

Q Do you remember going to the Tombs, as you have testified?

A Yes, sir.

Q Do you remember --- or did you go up and point your finger at Joe Berger while he was standing on the line with fourteen or fifteen others?

A (No answer).

THE COURT: Yes or no?

A Yes.

BY MR. WARE:

Q And didn't you do that to point out the murderer of Moiche Rubenstein?

A I said that he was with them. I don't know whether it was him or anybody else.

BY THE COURT:

Q You mean that he was the third man, is that it?

A Yes, I meant that he was the third man.

BY MR. WARE:

Q You know Izzy Presser's mother and sister, don't you?

A Yes, sir.

Q Didn't you tell them that you saw Joe Berger shoot Moiche Rubenstein?

A (No answer).

THE COURT: Yes or no.

A No.

BY MR. WARE:

Q And, since you changed your mind, didn't you tell Mrs. Presser that now you were going to send her son to the electric chair instead of Joe Berger, or words of that same meaning?

A

No, that is not my business.

Q How many sons have you got, Mrs. Blank?

A Six.

Q Six?

A Yes, sir.

Q Now, how long did you say you had known Joe Berger?

A I know him since his childhood.

Q Do you know his father and mother?

A Yes, sir.

Q Did they live near you at any time?

A No, sir.

BY THE COURT:

Q Did they ever live near you?

A No.

BY MR. WARE:

Q Well, where do you live?

A 183 Allen Street.

Q Well, where did they live when they lived downtown?

A I don't know.

BY THE COURT:

Q Well, where were you accustomed to meet them?

A She used to come up to me, upstairs.

BY MR. WARE:

Q Then you have known Joe Berger since he was a little boy, but you didn't know where he lived?

A At that time they used to live in Orchard Street. Now they live in Rockaway Beach.

BY THE COURT:

Q What floor do you live on?

A First floor.

Q In the front or the rear of the house?

A In the front of the house.

Q How many rooms have you there?

A Three.

Q Who lives with you there?

A Nobody. Myself and my

children.

Q Did "Moiche" Rubenstein live with you?

A No.

Q Well, didn't you say that Presser and Goldberg, came into your rooms looking for Rubenstein?

A Yes.

Q And that then you went downstairs?

A Yes, sir.

Q You mean you live one flight up from the street, is that it?

A One step, one flight up.

Q Yes, after you get into the house one flight up you live?

A Yes, sir.

Q What is on the street floor, a store?

A Storekeepers.

BY MR. WARE:

Q Do you know why Presser and Goldberg came up to your room looking for Rubenstein?

A Yes. I saw the pistol in his pocket. They were looking for "Moiche".

THE COURT: Strike that out.

BY THE COURT:

Q Just ask her whether Rubenstein was in the habit of coming to her house?

A Yes, he came to the house.

Q Often?

A Yes.

Q What brought him to your house?

A Because he went with my boy, Joe.

Q And where did Rubenstein live?

A I don't know.

BY MR. WARE:

Q Do you know where Berger lived?

A No.

Q Did you know what business Berger was in?

A No.

Q Did you ever hear of him being In any business?

A I didn't hear. I don't know. That isn't my business.

Q You say you were in the street at the time that Rubenstein was shot?

A Yes, sir.

Q What side of the street were you on, and what street?

A I can't state it to you, I can't paint the scene to you. I don't know how to do it.

Q Well, you can tell me the street you were on?

A On the side he was found shot. That's the street I was on.

BY THE COURT:

Q Well, what street was that?

A Allen Street.

BY MR. WARE:

Q And about what part of Allen street was that? Near what street?

A Between Houston --- in the middle of the block in Allen Street between Houston and ---

BY THE COURT:

Q Above or below Houston Street?

A The other side of Houston Street.

BY MR. WARE:

Q You have lived down in that neighborhood for a good many years, haven't you?

A I lived there ten years in that house.

Q Now, did you say this side or the other side of Houston Street?

A It was towards Stanton Street.

Q Houston and Stanton?

A Yes, Houston and Stanton.

Q What were you doing down on the street?

A I wanted to

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buy some fruit for a child.

Q Had you had your supper?

A Yes.

Q Who was upstairs in your room when you left it?

A My daughter in law.

Q Anybody else?

A There was a strange boy there, but I don't know him.

Q Was your son Joe there?

A No.

Q Well, you say there was a strange boy, you don't have strange people in your house, people that you don't know, do you?

A No.

Q And when you went down, you say, to buy something, you say you left your daughter in law, didn't you?

A Yes.

Q And what were you going to buy?

A Sausage.

Q And where were you going?

A Houston Street.

Q Were?

A I wanted to buy from a man who sells bolognas there.

Q Where in Houston Street?

A Corner of Houston there is a bologna store.

Q Houston and what?

A Houston and Allen.

Q And where was your house?

A 183 Allen Street.

Q Allen?

A Yes, sir.

Q And you wanted to go to Houston and Stanton?

A Houston and Allen.

Q Houston and Allen?

A Yes.

Q And how far is that away from where you lived?

A A

short block.

Q Now, you say you saw Rubenstein and three men with him?

A Rubenstein came from Houston Street and they went towards him.

Q And about what time of the night was this?

A About ten o'clock in the evening.

Q When did you first hear, that day, that "Moiche" Rubenstein had cut up Joe Berger.

A In the day time they were talking about it.

Q Everybody was talking about it in the street?

A In my house. My son came up and said, "Rubenstein had a fight with Berger."

Did Berger come to your house, that afternoon, to see your son?

A No, sir.

Q Didn't he --- don't you know and didn't you say that Berger was around trying to borrow a gun to go after Rubenstein with?

THE COURT: Well, now, I will sustain an objection to that. If she heard Berger make any such request, she may testify.

MR. WARE: No, she wouldn't.

THE COURT: But what she had heard others say wouldn't be evidence in the case.

BY THE COURT:

Q Did you see Berger that day?

A No.

Q Did you hear him ask any one for a gun?

A No.

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BY MR. WARE:

Q But you did hear that he had had a fight with Rubenstein, is that right?

A That's all.

Q And that Rubenstein had cut his face, Berger's face?

A (No answer).

THE COURT: There is no dispute about that, you know.

A Yes.

BY MR. WARE:

Q And that Berger was looking for Rubenstein to get even; did you hear that?

MR. EDWARDS: Now, I object to any more hearsay, if your Honor please.

THE COURT: Yes, I sustain the objection. The other is harmless, because Berger has testified to it. There is no, dispute about that.

MR. WARE: That's all.

RE-DIRECT EXAMINATION BY MR. EDWARDS:

Q Now, Mrs. Blank, when you saw Berger in a line of fourteen or fifteen men over the Tombs, what did you understand that you were there for?

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

THE COURT: Well, I will allow it.

MR. WARE: Exception.

THE COURT: She has a right to explain her statement?

A I was brought there so that I could recognize them, but I

knew them, anyway.

BY THE COURT:

Q Recognize whom?

A I wanted to see whether those two that did the shooting were there.

Q Well, why did you pick out Berger? That's the question?

A Because I wanted Berger to be a witness with me.

Q But who told you?

A I did it on my own account.

Q Well, why didn't you pick out some one else to be a witness?

A Because I knew he was mixed up in the case.

BY MR. EDWARDS:

Q Now, did you say anything at the time you picked Berger out, to anybody?

A I didn't say anything. I can't talk to anybody I can't speak English.

BY THE COURT:

Q Well, who spoke to you before you went to the Tombs?

A A detective brought me there.

Q Now, before you picked out Berger, or before you went into that corridor to pick out any one, what did the detective say to you?

A Nothing.

BY MR. EDWARDS:

Q Didn't the detective speak Jewish?

A He couldn't talk. Jewish and I couldn't talk English.

BY THE COURT:

Q Well, but somebody spoke to you in Jewish?

A No. I did it on my own account. I insulted Joe Berber. I said, "You

are a murderer. Why don't you tell who done that? You know who done the shooting."

Q When did you tell him that?

A When I was in the Tombs.

BY MR. EDWARDS:

Q Will you tell me whom you saw before you went over to the Tombs?

A I wanted to go on my own account, but detectives brought me there.

Q Well, who did you ask to take you there?

A I told my son --- he is outside in the hall --- and I told him those two had done the shooting.

THE COURT: Well, strike that out, what she told the son.

BY THE COURT:

Q But didn't you tell the District Attorney, to MR. Deuel, or some one else, before you went to the Tombs --- didn't you speak to him?

A No.

BY MR. EDWARDS:

Q Did you go over to the District Attorney's office before you went to the Tombs?

MR. WARE: I object to that, as immaterial.

THE COURT: Allowed.

MR. WARE: Exception.

A Not before, but after.

BY THE COURT:

Q Well, but how did you get into the Tombs? That is the

point?

A I went with a detective.

BY MR. EDWARDS:

Q Well, now, will you explain to us how you talked with the detective, if you couldn't talk English and he couldn't talk Yiddish or Jewish?

A My son was there.

Q And your son interpreted for you, did he?

A Yes, sir.

Q Well, now, tell us what instructions, if any, the detective gave you, through your son as interpreter?

A He told me to be a witness, and I wanted to be a witness on my own account. I wanted to be a witness.

Q Well, what did he tell you about the Tombs, and about picking out any one in the Tombs?

A I wanted to see whether they were there, and then I found out that the defendant was there.

Q Yes, well, now, when did you first see the defendant after the shooting?

A I only saw the defendant the very night the shooting took place.

BY THE COURT:

Q Well, when was the next time you saw him after that?

A I didn't see him any more.

BY MR. EDWARDS:

Q Until you saw him in Court?

A I saw Joe Berger in Court, but not those other two.

Q But I mean in Court, to-day?

A Yes, now I see him.

Q And this is the first time you have seen him since the

shooting?

A Yes, sir.

MR. EDWARDS: That's all.

RE-CROSS EXAMINATION BY MR. WARE:

Q Did you see Joe Berger at the time of the shooting?

A No, sir.

Q Then what did you pick him out for a witness for?

A Because I wanted him to be a witness.

Q Well, if he wasn't there, how could he be a witness?

A I knew that, if I would tell on him, he would be a witness.

Q If you would tell what on him?

A Because he knows, Joe Berger knows who done the shooting.

Q How does he know, if he wasn't there?

MR. EDWARDS: That is objected to as argumentative, and calling for the mental operation of the witness.

THE COURT: I will allow it.

A They have told him. They told Joe Berger. He knew all about it.

BY MR. WARE:

Q Have you seen Joe Berger lately?

A No.

Q Eh?

A No.

Q Just one more question. At the Tombs, you insulted Joe Berger, didn't you? You said, "You are the murderer, didn't you?"

A Yes, yes. I told him, "You are a murderer, if you are not going to tell who done the shooting."

Q Well, why should he be a murderer, if he didn't tell who did the shooting?

A They told him, on the night they did the

shooting, that they did the shooting, and if he don't tell, he would be a murderer.

Q How do you know that?

A Because Joe Berger was with Katz, and he had his cheek all cut.

Q Did you see Joe Berger from the time that he was arrested until the time you pointed him out in the Tombs?

A No.

Q Then you didn't know whether he had said anything to anybody, or whether anybody had said anything to him, did you?

A A Joe Berger, and then you will hear.

Q Yes. You picked him out the afternoon of the day following the night that Rubenstein was shot; the next day you picked him out?

MR. EDWARDS: Now, I submit that that is not a proper question, and doesn't state the facts as they exist. He was not arrested until the night following the night of the shooting, and nit was the next Saturday that she picked him out.

A I didn't pick him out. I only said, "If you don't tell, then you are a murderer."

BY MR. WARE:

Q If you don't tell what?

A I told him to tell; he should say that the night they did the shooting that they were to see him, Berger, and told him who did the shooting.

Q And all this conversation, all this statement was made when you saw him in the Tombs, and picked him out of the fifteen men? Yes or no?

A In the Tombs, I told him, "You are a mur-

derer, if you don't tell who done the shooting."

Q In the presence of the Deputy Warden and the keepers and the fifteen men on the line?

A Yes.

Q And berger heard you say that to him, did he?

A Yes, sir.

MR. WARE: That's all.

BY MR. EDWARDS:

Q And what did Berger do or say? Anything?

A Berger said, "I will tell."

Q Now, was there anybody there besides you and Berger who understood Jewish?

A How do I know?

Q Had any one there spoken Jewish to you?

A No.

MR. EDWARDS: That's all.

ROSA KUTTLER, a witness called on behalf of the people being duly sworn and examined, through the same official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mrs. Kutler, where were you living on the eleventh of March last?

A By Myrl Herschkowitz.

Q And where did she live?

A In the same house with me.

Q Well, where was that house, what street?

A 20 Pitt Street.

Q Do you know Izzy Presser?

A Yes, sir.

Q How long have you known him?

A Several months, a couple of months.

Q And where did you used to see him?

A I saw him in Myrl Herschkowitz's house.

Q And did he come there often?

A Every day.

Q Now, do you remember the 11th of March, the day when "Moiche" Rubenstein was shot?

A Yes, sir.

Q Did you know him?

A Yes, sir.

Q Now, I want you to come down to the evening of that day. Where did you go that evening?

A I went to buy some powder.

Q Where?

A Alien and Stanton, in the drug store.

Q And was that drug store on the corner or in the middle of the block?

A On the corner.

Q Which side of the street, as you go uptown?

A Towards Houston Street.

Q Now, what I want to find out is whether it is on your right or left hand as you go uptown?

A As I go from Rutgers Street, it's just on the corner, on the left side. (Illustrating).

BY THE COURT:

A Stanton and Allen, is it?

A Yes, Stanton and Allen.

BY MR. EDWARDS:

Q Do you know which is the north, south, east of west corner?

A It's uptown, towards 14th Street.

Q Yes. That's what I wanted to make clear. What happened while you were in the drug store?

A Well, I was buying the powder in the drug store, and I heard a shot.

Q Well, when you heard a shot, from what direction did the sound come?

A It came from Stanton Street.

Q And what did you do when you heard it?

A I started to shout, "What are you doing, Izzy?"

BY THE COURT:

Q Did you remain in the drug store when you heard the shot?

A No, I went outside.

Q Well, where did you go?

A (No answer).

BY MR. EDWARDS:

Q When you got outside, what did you see?

A I saw Moiche Rubenstein on his knees, and he said, "Please, Izzy, don't kill me."

Q Well, who else did you see there besides Rubenstein, if any one?

A I didn't see nobody.

Q Well, tell us again just whom you did see?

A I saw Moiche Rubenstein, and I see a woman on the stand, that's all.

Q Now, when you first got to the door of the drug store, ---

A The elevated railroad passed by there at that time.

Q Well, when you first got to the door you say you saw Moiche Rubenstein on his knees?

A Yes.

Q Was there anybody else with him?

A No, I didn't see nobody.

Q Well, who was he speaking to? Any one?

A Rubenstein said to Izzy, "Please don't shoot me."

Q Well, who is Izzy?

A Izzy Presser.

Q Well, where was he?

A He stood next to him.

Q Well, what did you see him do?

A I saw him shoot. He shot him.

Q Well, what did he shoot with?

A With a gun.

Q Well, now, what happened then?

BY THE COURT:

Q How many times did Izzy shoot, if you remember?

A I heard two shots and then I fainted.

BY MR. EDWARDS:

Q Two shots were all you heard?

A Yes. The third shot I heard, I had already fainted, and it seemed to me like a dream.

BY THE COURT:

Q Do you mean that you heard one shot in the drug store and one in the street?

A Yes, sir.

Q Or two on the street?

A No, one in the drug store and one in the street.

BY MR. EDWARDS:

Q What was this third shot that you spoke of?

A I didn't hear the third shot, because they took me home immediately.

MR. WARE: I object to that, on the ground that she don't I know whether there is a third shot or not.

THE COURT: Strike it out.

BY MR. EDWARDS:

Q What did you mean, when you said, a moment ago that you

heard a third shot, as if in a dream?

A I mean that I couldn't see it; my eyes were shut and I couldn't see. It was like dream.

Q Well, did you hear a third shot?

A I heard a third shot but I couldn't see it, because I was dizzy.

Q How long after you heard the first shot in the drug store was it before you got out on to the street?

A Two minutes. That's all.

Q And did you see any one else with any pistols excepting Izzy Presser?

A There was nobody, only Izzy Presser.

Q Now, where did you go after that?

A Myrl Herschkowitz took me around to her house.

Q Is that a man or a woman?

A Yes, a woman.

Q Now, did you see Izzy Presser again that night?

A At twelve o'clock at night.

Q Was anybody with him?

A No.

BY THE COURT:

Q Well, what time was the shooting that you saw?

A Nine or half past nine.

BY MR. EDWARDS:

Q At the time when you saw Presser, at twelve o'clock midnight, about, was anybody with him?

A Nobody.

Q And where did you see him?

A In the house of Myrl Herschkowitz.

Q Now, had you seen Presser, that night, before the shoot-

ing?

A Yes.

Q About what time?

A About six or seven o'clock.

Q And where did you see him?

A At Myrl's house.

Q Was that the only time that day you saw him before the shooting?

A I saw him several times, a couple of times.

Q And where else did you see him besides at Mrs. Herschkowitz's house?

A He was in Myrl's house a couple of times that day.

Q Did he come there often while you lived there?

A Oh, Yes, all the time.

Q And did you hear any conversation between Izzy Presser that afternoon, before the shooting, with Mrs. Herschkowitz?

A After or before the shooting?

Q Before the shooting?

A Before the shooting I didn't hear, because she called him to her room and talked to him there.

Q Well, did you hear any talk between Mrs. Herschkowitz and Izzy Presser at any time before the shooting took place, that afternoon?

A No, not that day. But two weeks previous I heard something.

Q No. That's too remote. Did you see Izzy Presser take anything out of the house on that afternoon, the afternoon of the shooting?

A At seven o'clock in the evening, I saw Myrl take out the gun from the ice box, and give it to him.

Q Where was that?

A In the house of Myrl.

Q Well, what did he do with the gun when she gave it to

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him?

A He went to the window, and something above the window he took down, and put it in the gun.

Q Did you see what it was?

A No.

MR. WARE: I ask to have that stricken out, if your Honor please.

THE COURT: Strike it out.

MR. EDWARDS: May I not ask her that? It is the act of a co-conspirator, after we have shown concerted action.

THE COURT: Well, she says she doesn't know what it was that he put in the gun. Strike that out.

BY MR. EDWARDS:

Q Did you hear anything said by Presser to Mrs. Herschkowitz with respect to the gun?

A No. I asked Myrl Herschkowitz, "Why did you give him the gun?"

THE COURT: No. Strike that out.

BY THE COURT:

Q Are you related to Mrs. Blank?

A No, sir.

Q You are not her daughter in law?

A Oh, never. I have a husband.

MR. EDWARDS: That's all.

CROSS EXAMINATION BY MR. WARE:

Q Who is Myrl? The man that you saw giving Izzy Presser the gun?

A No, it isn't a man. It's a woman.

Q Oh, a woman?

A Yes.

Q Is that your apartment?

A I live there. While my

husband was in jail I was there.

Q Well, was anybody in the apartment, any man who wasn't in jail?

A No, nobody, only me.

BY THE COURT:

Q Well, did Izzy live there?

A He used to come there and sleep there sometimes, not all the time.

BY MR. WARE:

Q Did Joe Berger use to come there too?

A No, sir; I never saw Joe Berger in the house.

Q Who owned this gun who did it belong to?

A I couldn't tell. All I heard was Izzy Presser came in, and said to Myrl, "Where's my gun?"

Q Well, you used the ice box sometimes, didn't you?

A I never use it. I work in a shop, and I used to get my board and eating from her.

Q Do you mean to say that you never went to the ice box?

A I never went to the ice box. Sometimes I went there to get a little water, but I didn't see anything in the Ice Box.

Q Well, don't all your friends down there carry guns, the male portion of the community?

A No.

Q This drug store that you say you were in, was on the corner of Eldridge and Stanton, was it?

A Yes.

BY THE COURT:

Q Or was it Eldridge and Allen?

A I can show you the drug store, but I don't know where it is.

BY MR. WARE:

Q Don't you know what street it is on? You told us before?

A Allen and Stanton. As I go from Ludlow Street, it is right on the corner of Allen and Stanton Street, towards West 14th Street.

Q Are you sure?

A Yes, that's true.

Q Now, don't Allen and Stanton run parallel like Broadway and this street here in front of the Court House?

THE COURT: Oh, no, they do not.

BY MR. WARE:

Q Didn't I ask you whether Allen and Eldridge Street ran in the same direction?

THE COURT: No, you did not say anything about Eldridge Street.

MR. WARE: Then I withdraw that question and ask you this question.

BY MR. WARE:

Q Is it not a fact that Eldridge and Allen Street run in the same direction?

THE COURT: Well, what has that got to do with this case, Mr. Ware?

MR. WARE: Everything, because, if they do, there's no such place on the corner.

THE COURT: One minute. She said Allen and Stanton.

MR. WARE: Allen and Stanton?

THE COURT: Yes. What is the use of wasting time?

BY THE COURT:

Q How long have you been in this country?

A Ten years.

Q And you have lived over there all the time?

A Oh, no.

Q Well, how long have you lived over there?

A About seven weeks.

Q You were living in Pitt Street in March, you said?

A At the time that my husband was arrested, I lived in Pitt Street.

Q Well, where were you living this night that you went into the drug store?

A By Myrl Herschkowitz.

Q And where did she live?

A 28 Pitt Street.

Q Near what street is that?

A Where the cars run, near Delancey, near the Bridge.

BY MR. WARE:

Q Well, is that anywheres near the drug store that you say you were in at the time you heard the shots?

A About two or three houses away from there.

Q Houses?

A Near Mrs. Blank's house. Two or three houses away from Mrs. Blank's house.

BY THE COURT:

Q Well, never mind Mrs. Blank's house. How far away from your house, from Myrl's house?

A Six or seven blocks, I, believe.

BY MR. WARE:

Q Am there are six or seven drug stores between the house

where you say you were living at the time, and this particular drug store, are there not?

A I used to go to that drug store, because they always give me a present. I had a card, and every time I bought something, they punched it.

Q Now, don't you know that it is twelve blocks from the address that you have given as in Pitt Street, to this drug store at Stanton and Allen?

A That doesn't make any difference. No matter how many blocks it is, as long as I get a present, I went there.

Q Do you know the Blanks?

A When Moiche was shot, I saw Mrs. Blank do all she could for him.

MR. WARE: I didn't ask her that, and I ask that that be stricken out.

THE COURT Strike that out.

BY THE COURT:

Q Well, did you ever see Mrs. Blank before the night of the shooting?

A No, sir.

BY MR. WARE:

Q And you didn't know the Bergers either?

A I know Joe Berber, because he had a pool room in Stanton Street.

Q You didn't go to the pool room?

A No; but my husband used to go there, once in a while.

Q And you have known Joe Berger how many years?

A About eight or nine months.

Q And he was a friend of your husband's?

A No, I don't

Know.

Q Well, how do you know that your husband knew him in the pool room then?

A I used to go in there and I used to see him in there, see him go in there, I used to see my husband go in there.

Q Do you know that your husband and Izzy Presser had trouble about eight or nine months before this affair with Rubenstein, don't you?

A Never.

BY THE COURT:

Q Well, do you know? Yes or no?

A No, I don't know. They never had any trouble.

THE COURT: Well, strike out the last part of the answer.

MR. WARE: Yes, sir; I was just about to move to strike it out.

BY MR. WARE:

Q Do you know that there is a drug store at the corner of Eldridge and Stanton Street, one block from the one that you were at?

MR. EDWARDS: If your Honor please, I don't think that is material.

THE COURT: Well, let her answer it.

MR. EDWARDS: It makes no difference whether she did or not.

A Yes, I think there is.

BY MR. WARE:

Q But that is not the one you were at?

A The drug store

where I get my card punched, that is the drug store I go to.

BY THE COURT:

Q Well, where is that, for the last time?

A Allen and Stanton.

Q Who told you to come here as a witness?

A I came myself, because I was dreaming about this case all the time.

Q Well, did you give your name to any one that night?

A I told a boy that I was going to a Jewish Rabbi and tell him that, and the boy went and told them, told Myrl Herschkowitz and two fellows.

MR. WARE: That's all.

RE-DIRECT EXAMINATION BY MR. EDWARDS:

Q How well did you know Joe Berger?

A From a distance.

Q Did you ever talk to him?

A Well, sometimes.

Q Did he visit you at your house?

A Never.

Q Did you ever go to his father's, house?

A Never.

Q Just knew him around the neighborhood, is that right?

A Yes, sir.

Q Did you know him any better than you know Izzy Presser?

A No, I know Izzy Presser better.

MR. EDWARDS: That's all.

RE-CROSS EXAMINATION BY MR. WARE:

Q And you never heard of Izzy Presser and your husband having a fight?

A No, sir.

Q You were not present and didn't take part in it?

A No, sir.

THE COURT: Well, she says she never heard of any, and it does not matter whether there was or not, if she had never heard of it.

MR. WARE: Very well. That's all.

BARNETT PATLIN, of 195 East Second Street, being duly sworn:

MR. EDWARDS: If your Honor please, I would like to recall the last witness for a moment. May this witness step aside for a moment?

THE COURT: Yes.

ROSIE KUTTLER, being recalled by the District Attorney testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS:

Q Mrs. Kuttler, I forgot to ask you where you moved from New York after this shooting?

A Before I was in Headquarters or after?

Q No. How long did you stay in New York after the shooting?

A Three or four weeks.

Q And then where did you go?

A When my husband came from Jail I moved out of there and moved to Henry Street.

Q No, no. When did you leave New York?

A I left New York when I left Headquarters. Myrl came with two toys, and wanted to strike me, and then I left New York.

Q No. Don't tell us that? When did you leave New York? That's what I want to know?

A I'm away from New York about

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three months.

Q And where did you go to?

A To Detroit.

Q And did you leave your address with the District Attorney when you left?

A I couldn't give my address because I was told to get away, because they wanted to do me injury.

THE COURT: Strike out that last part.

BY MR. EDWARDS:

Q Don't tell me why, but just answer my question.

A No.

Q You were brought back by one of the District Attorney's process servers from Detroit, were you not? Arriving here on Saturday evening?

A Yes, with a Detective. A Detective brought me here.

CROSS EXAMINATION BY MR. WARE:

Q Did you come down here from Detroit?

A Yes, sir.

Q And who came with you from Detroit?

A A detective. There he is. (Indicating a man in the Court Room).

THE COURT: Well, stand up please. (Indicating the man in the audience.)

THE WITNESS: There he is. (Indicating Thomas Quarles, a process server in the District Attorney's office).

BY MR. WARE:

Q Well, what are you going to be paid for coming here from Detroit?

A I don't know. But he paid for my ticket.

Q Well, you have hopes, haven't you?

MR. EDWARDS: Objected to.

MR. WARE: Withdrawn.

BY MR. WARE:

Q Well, you didn't pay your fare, did you?

A No. But I wanted to come here. I wanted to earn enough money to get from Detroit to this city, because my husband had left me.

Q And had you earned enough money to come here?

A. No, sir.

Q And you made a bargain with the detective, didn't you?

A Not a word. I didn't want to go, because I didn't know what he wanted to bring me here for.

Q You didn't want to go?

A No. I wanted to come here I knew I was going to be a witness, I wanted to be a witness, but I didn't know why he brought me here.

Q And you don't know how much you are going to get for your trouble and time?

A I don't want nothing. I don't want no money for that purpose.

MR. WARE: That's all.

MR. EDWARDS: That's all.

BARNETT PATLIN, being recalled to the stand, testified as follows:

DIRECT EXAMINATION BY MR. EDWARDS:

Q Patlin, you are at present confined in the City Prison, are you not?

A Yes, sir.

Q Awaiting trial?

A Yes, sir.

Q And you have been convicted three or four times, haven't

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you?

A Yes, sir.

Q You were convicted of our burglary twice --- of burglary three times, rather?

A Yes, sir.

Q And larceny once?

A Yes, sir.

Q And you have served time on each conviction, haven't you?

A Yes, sir.

Q Now, how long have you known this defendant?

A About four months --- now, about seven or eight months.

Q And do you know Izzy Presser?

A Yes, sir.

Q Do you know Joe Berger?

A Yes, sir.

Q How long have you known Izzy?

A I have known him about two years. I first met him in the penitentiary.

Q And how long have you known Joe Berger?

A About eight months now.

Q And do you know Barney Ginsberg, or Barney Lewis?

A About seven or eight months.

Q Now, Patlin, do you remember the eleventh of March, the day Moiche Rubenstein was shot?

A Beg pardon?

Q (Question repeated)

A Yes.

Q Now, when was the first time that you saw the defendant after that?

A I believe it was the next morning.

Q And where did you see him?

A On Eldridge and Stanton Streets.

Q And who was with him?

A He was alone before, until Izzy Presser came and Barney Ginsberg.

Q Well, did you join him before they came up?

A I joined him after.

Q Well, they were all together when you joined them?

A You are talking of after the murder?

Q Yes, the next morning.

A Yes.

Q What I want to get at is who was with the defendant, "Dutch" when you met him, that morning?

A Izzy Presser and Barney Ginsberg.

Q Now, tell us again. Where did you meet them?

A At Eldridge and Stanton Streets. Izzy Presser I met first, at Allen and Stanton, in the boot black parlor.

Q Yes.

A In the presence of Max Gross and Benjamin Blank.

Q And where did you and Izzy go from there?

A From there we walked towards Eldridge and Stanton, and I met Barney Ginsberg.

Q And from there where did you go?

A We walked up to Houston Street, and this Henry Goldberg came along.

Q Now, when you met Goldberg, how many of you were there? Izzy and Ginsberg and yourself and "Dutch"?

A Yes.

Q Anyone else?

A No, sir.

Q Just the four of you?

A Yes, sir.

Q Now, where did you four men go? Now, try and keep your voice up.

A We walked up towards Houston Street, and Izzy Presser bought a morning Journal at a stand there?

Q Was that an English paper?

A No, sir; a Jewish paper. And Izzy Presser asked me if I had any change, and also Barney Ginsberg, and I said, "Yes, I have some change," and they said they didn't eat any breakfast yet, and I said, "Well, come on into the restaurant and we will have something to eat."

And we went in to Rottner's Restaurant, on Houston Street between Eldridge and Forsythe Streets.

Q Who went in?

A Barney Ginsberg and Izzy Presser and myself.

Q What became of "Dutch"?

A He went away.

Q And when did you see "Dutch" after that?

A I didn't see him until after his arrest.

Q Did you have any further talk with him after that?

A No, sir.

Q And you had no conversation with Ginsberg --- I don't mean Ginsberg --- I mean this defendant, at all, that morning?

A No, sir.

Q Nothing was said about Morris Rubenstein at all?

A No, sir.

Q While he was there?

A No, sir.

MR. EDWARDS: That's all.

CROSS EXAMINATION BY MR. STODDARD:

Q What time was it that you met Presser, as you say, at Eldridge and Stanton Streets?

A That was between, eight and nine in the morning.

Q The morning after this killing is alleged to have taken place?

A Yes, sir.

Q And then you met Ginsberg and also Goldberg?

A Yes, sir.

Q And how far is Eldridge and Stanton Street away from where this man was killed?

A About a block.

Q And, the next morning, at about nine o'clock, you say Presser and Goldberg were still a block away from the scene of the killing?

A Yes, sir.

Q And Presser felt hungry, and went in and got some break fast at Rottner's restaurant?

A Yes, sir.

Q You were in the Tombs with Presser and Goldberg?

A Yes, sir.

Q And you were the one that told them that the District Attorney was sending for Cohen and trying to find out what Cohen knew about this?

A I did not.

Q Do you remember that you made a statement to me in the Tombs, and told me what you saw about this?

THE COURT: Well, if that statement differs from his statement here, point out the differences.

MR. STODDARD: I am asking first whither he made such a statement.

THE COURT: Well, there is but one thing about his testimony. If you can contradict what he has testified to here all right.

BY MR. STODDARD:

Q Now, on July 9th, 1915, in the presence of Mr. Ware, in the attorney's room at the Tombs prison, did you tell me that you were present when Moiche Rubenstein was shot; did you tell me that then?

THE COURT: Well, that does not contradict anything that has been brought out here, to-day.

MR. STODDARD: Well, if your Honor please, I can't state it all in one sentence.

THE COURT: Well, I will limit you to that. This is cross-examination. Now, this man has testified to very little, as I understand it.

MR. STODDARD: But he made a very full statement to me, and I would like to question him about it.

THE COURT: Well, he was not asked a question about the shooting here, not that I recall.

MR. EDWARDS: No, sir; I did not ask him a question. If I may suggest ---

THE COURT: You asked him simply about meeting these men, the next morning and what they did then.

MR. EDWARDS: Yes, sir.

BY MR. STODDARD:

Q Now, were you present when the shooting took place?

THE COURT: Now, you are making him your own witness on that?

A No, sir.

BY MR. STODDARD:

Q Did you tell me that you were present at the shooting?

THE COURT: Now, you are contradicting your own witness.

BY MR. STODDARD:

Q Yes or no?

A Just a minute. I would like to explain this.

Q No, I don't want any explanation.

THE COURT: Now, you must let him explain, when you ask him about it. Go on.

A Will you please, counselor, tell the Court how you got to question me? How I came downstairs?

BY THE COURT:

Q Did you have a talk with Mr. Stoddard there?

A I did.

Q Well, now, the question is, did you tell him that you were present at the shooting? Yes or no?

A I was down in the counsel room ---

Q No. (Question repeated)

A Well, your Honor, I must explain.

Q Well, you will have an opportunity to explain.

MR. EDWARDS: I'll give you an opportunity to explain. Go on and answer the question.

A I did.

BY MR. STODDARD:

Q Didn't you tell me that you had been framed up in the highway robbery case in which you had been arrested, because the

knew you were going to be a witness in this case, and that was the reason you were going to be framed up?

A I said it on the request of Izzy Presser and Henry Goldberg.

Q But you did say so?

A Yes, I said it on their request.

MR. STODDARD: That's all.

RE-DIRECT EXAMINATION BY MR. EDWARDS:

Q Now, won't you tell us just how you came to say those things, Patlin?

THE COURT: Well, I don't see how this is material, except, on his credibility.

MR. EDWARDS: Well, counsel made him his own witness as to this.

BY MR. EDWARDS:

Q (Question repeated)

A I came up on the 8th tier of the Tombs Prison, and it was the same tier where Izzy Presser and Henry Goldberg was.

Q This defendant?

A Yes, sir; this defendant.

THE COURT: Well now, be definite. Anything that Goldberg said to you, you may testify to.

A (Answer continued) Yes, sir. Goldberg merely suggested Izzy Presser that he should write a letter to Judge Rosalsky, and have Judge Rosalsky appoint Mr. Ware as my counselor, and my signature was signed to the letter, without my knowledge. I was very much surprised to see Mr. Ware, counselor Ware, send

for me; and, while being down in the counselors' room, Izzy Presser and Henry Goldberg was there also, and they have already talked to Mr. Ware, as they have tried to get me, in the Tombs, to be a witness for them, and to tell the lawyers, because my people lived at 182 Allen Street, it would surely convince the jury and also the lawyers, if I would say that I saw Joe Berger killing Morris Rubenstein. I was actually worried there and knew not what to do, as I was on the same tier, and I had already, previous to that, given information to the Police in regards to what I have known about the murder, and I was responsible for the arrest of Izzy Presser, and, when I come to the Tombs, I feared that I would get a beating there, and I promised them that I would do anything for them.

Q And was that the reason that you stated, that you said you were there at the shooting?

A Well, that's the positive reason, that I stated to the lawyer that I was there across the street, and knew who killed Morris Rubenstein. But it was they that first spoke to the lawyer, and I simply nodded with my head, yes, in regards to what they said.

Q Well, were you present at the shooting?

A No, sir; I wasn't.

Q Did you see who shot "Moiche" Rubenstein?

A I wasn't there at the shooting.

And had you had a talk at any time with Goldberg since the shooting, about Morris Rubenstein being short?

A Yes, sir.

Q When was that?

A That was in the Tombs.

Q What did he tell you with respect to the shooting?

A Beg pardon?

Q What did the defendant Goldberg tell you about the shooting?

A What he told me about the shooting was this, that Izzy Presser was laying in the Tombs on a charge of highway robbery, and Berger and Morris Rubenstein was also a friend to him, and, "Dutch" was also a friend of his. They were great pals.

Q Goldberg told you this, you say?

A Yes.

Q Now, come down to the actual shooting. What did he tell you about that?

A The actual shooting was that Izzy Presser come out, and there was some remark that Berger has made to Izzy Presser, in regards that "Moiche" was trying to take his girl away, and he accused him of being a stool pigeon.

Q Who accused whom of being a stool pigeon?

A Izzy Presser.

Q Accused whom?

A Morris Rubenstein.

Q I see.

A And Henry Goldberg was a pal of Izzy Presser and they have made up their minds to get him. Then, that night, after Joe Berger was cut up, they got him, he told me, but, being in the Tombs, they framed up a defense.

THE COURT: Well, never mind that strike that out.

BY MR EDWARDS:

Q Well, did he tell you any more about how they shot him?

A That he fired the first shot.

Q Well, who told you that?

A He, himself.

Q Goldberg?

A Yes.

Q Did he tell you how many shots were fired altogether?

A Three shots were fired.

Q And did he tell you who fired the other two shots?

A Izzy Presser.

Q Did he tell you what he did, after he fired the first shot?

A He ran in the hallway of 187 Allen Street.

Q Now, is that all that Goldberg told you about the killing of Morris Rubenstein?

A Yes.

Q Did he tell you why he killed him?

A Yes.

Q What did he tell you about that?

A It was on account of Izzy Presser having some trouble with Morris Rubenstein.

Q Did he tell you what the trouble was about?

A Yes, sir. It was on account of his girl. She was at the time in the workhouse, and Morris Rubenstein was going to see her, and Morris Rubenstein was accused of trying to take his girl away, and also that he was a squeeler, a stool pigeon.

Q Who did Goldberg tell you accused him of that?

A Izzy Presser.

MR. EDWARDS: That is all.

BY THE COURT:

Q Didn't you say, on yet direct examination, that you hadn't talked with Goldberg since the shooting?

A I meant on the outside, your Honor.

Q But you did talk with him in the Tombs?

A Yes, sir.

RE-CROSS EXAMINATION BY MR. STODDARD:

Q Did you tell this story to the District Attorney? Did you tell the District Attorney what you have just testified now, that Goldberg said to you in the Tombs?

A No, sir.

Q You have never told that to the District Attorney?

A I have told some other things that I have spoken with Henry Goldberg, I believe.

Q Did you tell the District Attorney that Goldberg had admitted to you in the Tombs that he had fired the first shot, and that Presser had fired the next two shots?

A No, sir; I didn't.

Q And yet you were in the Tombs, a man who had given information to the Police, and you were giving information right along to Mr. Deuel at the time, while you were in the Tombs?

A I made one statement in regards to the statement before.

Q Answer my question.

THE COURT: Well, that is an answer.

BY MR. STODDARD:

Q You have been over to Mr. Deuel's office how many times since you have been in the Tombs?

A I couldn't say how many times.

Q You have been over there fifteen or twenty times, haven't you?

A About fifteen times.

Q And during those fifteen times, you made statements to him concerning what you knew about this?

A I made one state-

ment, which includes everything that I knew about the murder, that I heard from their own lips.

Q And did you or did you not tell Mr. Deuel, or anybody in the District Attorney's Office, that Goldberg had said that he fired the first shot?

A I don't remember.

Q You told them in the District Attorney's Office about meeting Presser at the bootblack parlor, and then meeting Ginsberg and Goldberg after the shooting?

A Yes.

Q And when did you tell that? The first time you went up there?

A Yes.

Q And what did you tell the other fourteen times you were up there; what did you talk about those times?

A That was in regards to how they were manufacturing witnesses.

BY THE COURT:

Q Who were manufacturing witnesses?

A Well, Presser and Henry Goldberg.

BY MR. STODDARD:

Q So that you went up there so that you could work with the District Attorney and help the District Attorney in every way that you could?

A I didn't belt the District Attorney. I helped the truth, that an innocent man was being framed up by Izzy Presser and Henry Goldberg.

Q Why didn't you tell the District Attorney that this man admitted to you that he fired the first shot?

A I told the District Attorney in one statement, of which I got the informa-

tion from Izzy Presser, and I thought it would be sufficient, and, when I come on the stand, whatever other things I knew, I tell the truth.

Q Didn't you think that it was important to tell the District Attorney that this defendant had admitted that he fired the first shot?

A It was important.

Q Well, why didn't you tell the District Attorney?

A Because it wasn't necessary. The District Attorney has the statement from me which includes everything that I knew about the murder.

BY THE COURT:

Q Including the statement of Goldberg's?

A I don't remember if I told the District Attorney what Goldberg said to me.

Q Well, that's all you know about the case, what Goldberg told you about it isn't it?

A Well, I know more, your Honor.

Q Well, you heard that Rubenstein was killed?

A Yes, sir.

Q But I mean as to the actual killing, the details of that? You were not present, were you?

A No, sir; I wasn't present.

Q And all that you heard was through Goldberg?

A No, sir; I heard it from Ginsberg and Presser, the morning after the shooting.

Q And afterwards you heard from Goldberg what you have

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told us?

A Yes, sir; afterwards, in the Tombs.

BY MR. STODDARD:

Q You have been indicted for highway robbery in the first degree, as a second offense, haven't you?

MR. EDWARDS: I object to that.

THE COURT: Well, he can show that there is a charge pending against him.

MR. EDWARDS: But a mere charge is not any proof against a man's character.

THE COURT: No, but it may go to the question of motive. The defense may show, if they desire to, that he has a motive to testify to other than the truth.

BY MR. STODDARD:

Q (Question repeated) I mean robbery in the first degree?

A Yes, sir.

Q As a second offender?

A Yes.

Q And if you are found guilty of that, you would get a minimum sentence of --- the only sentence that you can get is forty years?

THE COURT: No, twenty to forty. I have given both, so I know.

MR. STODDARD: I see.

THE COURT: So that I merely say that you can give less than forty.

BY MR. STODDARD:

Q You know that you can get not less than twenty nor more than forty years, you know that, don't you?

A (No answer)

Q Do you understand the question?

A No, sir.

Q You know that the penalty for robbery in the first degree, as a second offender, is not less than twenty nor more than forty years, don't you?

A I know it now that you tell me.

Q Didn't you know it before?

A No, sir.

Q You have been convicted three times of burglary before, haven't you?

A Yes.

Q And you have been convicted of larceny?

A Yes.

THE COURT: Well, he testified to that on his direct.

BY MR. STODDARD:

Q Has any agreement been made between you and the District Attorney's office?

A No, sir.

Q That, if you pleaded guilty, that you will get a less sentence than twenty years?

THE COURT: Well, I will sustain an objection to that question.

MR. STODDARD: I will withdraw the question.

THE COURT: You may ask him if he has been promised any benefit for his testimony here. But we deem it wise,

MR. Stoddard, in the interests of public justice and public policy, very often, to give less than the maximum, when they plead guilty.

MR. STODDARD: Yes, sir; I understand.

Q Have you made an arrangement with the District Attorney's office to be allowed to plead guilty of a lesser degree of crime to get a twenty year sentence, in consideration of your testimony here?

A No, sir; I never received any promises from anybody, as I had already given information about the murder, about two weeks before my arrest.

BY THE COURT:

Q What is the date of the alleged crime that you are charged with now?

A On the 16th of May.

Q That was two months after the murder?

A Yes, sir.

Q And you say that, two weeks after the murder ---

A No, beg your pardon, your Honor, it must have been about some time in April.

Q In April?

A Yes, sir.

Q But Rubenstein was killed in March?

A Yes, sir.

Q And the crime that you are charged with committing was not committed until April?

A Until April.

Q And you say, before even the commission of that crime, you had given information to the District Attorney, is that it?

A No, sir. I gave information to two officers in regards to the arrest of Izzy Presser.

Q And that information is the same as the testimony that you gave here to-day?

A Yes, sir.

Q What has made you change your --- I'll withdraw that. Did-n't you tell me that Goldberg and Presser were innocent; that

they did not do it, that they did not do this killing?

A I never made any such statement to you. Since I ever talked to you I told you that I knew who did the shooting.

Q Yes or no. Didn't you tell me that Henry Goldberg and Isidore Presser had nothing to do with the shooting?

A I did not, sir.

Q And didn't you tell me that those two men were being framed up, didn't you use that expression?

A They made that remark, and I nodded my head.

Q Didn't you make that statement to me?

A I did not, sir.

THE COURT: He says that they said it and that he nodded his head.

BY THE COURT:

Q That is, you nodded, you endorsed that statement?

A Yes, sir.

Q In other words, you say that this was a statement that Goldberg made, and that you were willing to testify to it?

A Yes, sir; I simply nodded.

Q I know, but that nod meant that you would so testify for them?

A Yes, that they wanted me to testify to that.

Q And you nodded to the lawyer when you heard that statement, to give him the impression that that story was true, and you would testify to that?

A Yes, sir.

Q But it wasn't true, you say?

A Yes, sir.

BY MR. STODDARD:

Q What has made you change your story now?

A Nothing has made me change the story, but it is simply a case where I knew just Joe Berger, where I knew the very facts of the case, and I also heard from the Tombs that they had been doing nothing but manufacture evidence to put the blame on Joe Berger, because Joe Berger happened to get cut by Morris Rubenstein on the same afternoon that the murder took place, and, as I found that this case is being made stronger and stronger against Joe Berger, and if I would keep my mouth shut, they would hand out to an innocent man that he would be indicted for murder. I agreed upon and promised them, I would do all I can, and say all they wanted me to say, in order that I might find out the truth, and how they are manufacturing their witnesses, to go on the stand and perjure themselves; and then, after I found out all that information I came to the District Attorney, and asked him to transfer me from the Tombs, as Mr. Ware, counsel Ware, had told me that he was going to bring me before Mr. Perkins, the District Attorney to get him to promise me that, if I go to testify for those hoys, that the District Attorney will not be hard against me. Now, I didn't ask him for that request. It was a request of Izzy Presser's. But I surely will not perjure myself for them, and I've made up my mind when I come on the stand I will tell the truth.

Q Do you remember and did you tell me that you were afraid

of the District Attorney's office, that, if you told the truth about Presser and Goldberg, that the District Attorney's Office could punish you, and you wanted a personal assurance from Mr. Perkins that, if Mr. Perkins told you to tell the truth, you would go on the stand and tell the truth and swear that these boys didn't do it?

A I beg your pardon, counselor. It was Izzy Presser that told MR. Ware.

Q Didn't you go before District Attorney Perkins, this past week?

A I did, sir. But did I say anything to Mr. Perkins?

Q Yes or no. I ask for a categorical answer, if your Honor please.

THE COURT: He says he went there but did not say anything.

BY MR. STODDARD:

Q And was Mr. Edwards there at the same time?

A I didn't say anything; I went there but I didn't say anything.

BY THE COURT:

Q Was Mr. Edwards there?

A Yes, sir.

BY MR. STODDARD:

Q Whenever you got any information in the Tombs, did you send word to the District Attorney's Office and go down to Mr. Deuel and tell him?

A If it was necessary, I did.

Q And the other fourteen times, after your first interview, were when you went down to MR. Deuel, thinking that it was necessary to give him some information that you had learned

in the Tombs?

A Beg pardon, sir?

Q (Question repeated) Were times when you thought it was necessary to go to the District Attorney's Office to give information that you had learned in the Tombs?

A It was a few times I went over in regard to my own case. I demanded an investigation from the District Attorney, Mr. Perkins.

Q When you talked about your own case, did you mention any possibility of a sentence --- a lighter sentence, in case you helped the District Attorney's office?

A I did not, sir.

Q You never mentioned that?

A No, sir; never.

MR. STODDARD: That's all.

BY MR. EDWARDS:

Q When you went down before Mr. Perkins, MR. Perkins told you then, didn't he, that the District Attorney was only interested in your telling the truth?

A Yes, sir.

Q And that, if you told the truth, it didn't make any difference if you testified for the People or the defense, you would not come to any harm?

A Yes, sir.

Q And he told you that, if you did not tell the truth he would prosecute you for perjury, just as soon, if you testified for the People, as if you testified for the defense?

A Yes, sir.

Q And that he wanted you to tell the truth and nothing else?

A Yes, sir.

RE-CROSS EXAMINATION BY MR. STODDARD:

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Q Is your case awaiting trial now?

A Yes, sir.

MR. STODDARD: That's all.

MR. EDWARDS: That's all.

THE COURT: We will adjourn now.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case to Tuesday morning, August 10th, 1915, at 10:30 o'clock.)

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