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Vol. 4, sec. 2 Summation by attorney for prosecution (Mr. Bostwick), describing witness testimony, reliability, physical evidence

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Abstract
Vol. 4, sec. 2 (pp. 2141-2178)

The People's summation (Mr. Bostwick): describes witness testimony, reliability, physical evidence, outlines unified theory of case

Keywords
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Mr. Bostwick's closing address to the Jury on behalf of the People:

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

I wish in the first place to spend just a moment in calling to your attention your duties as jurymen to society, to organized society, and to government. I want you to understand that the rights and the liberties and the lives of the community are in the last analysis dependent in this country, under our system of government upon the action of the jury. The responsibility that is placed upon you is very, very great, because a failure of the jury system to do right would lead to disorder and we would not be safe in the preservation of our just rights which are so dear to us.

I want you also to realize the function of the jury as opposed to the function of the Court. You will remember how the Court all through this trial has been so careful to see that no word came to your ears as legal evidence that was not admissible in the case, that nothing should come before your eye that was not legal evidence in the case. He is the sole arbiter as to what is the law and what is legal evidence to be presented to you. You, in your turn, are the absolute judges of the facts, and you find the existence of the fact irrespective of the Court,

and then the Court finally charges you on the law and you apply that law which the Court set down to those facts which you have found.

You are not here to sit and determine whether these people shall go or stay. You are here to determine whether certain facts exist. If those facts exist the defendants brought those facts into existence, not you. You are not the ones to say "We will now establish this fact and hold these men.” No, your province is to listen to the evidence and determine whether these men by their own acts have brought themselves within the provisions of the law.

Gentlemen, the statutes of the State which impose upon certain citizens duties are not put there lightly. It is after decades or centuries of experience that the people of the State of New York enact into law those wise provisions for the preservation of life and health. It was no accident that they read into the Labor Law that no door should be fastened, or bolted or locked during working hours.

I want you to remember that this is not a civil suit, this is not a case of those who lost their dear ones in the fire against these defendants, and no judgment in this case has any bearing upon nor should influence you in the slightest way in its relation to those civil suits.

This is a case of the People of the Slate of New York — the people who framed this law -- against these defendants, and you and the Judge and the people in this room and in this street outside are my clients, and it is for them I plead before you for justice in this case.

The greatest care was taken in the selection of this jury and you all promised upon your oaths that you would administer the law as laid down by this learned court and I trust that when you come to consider your verdict you will take that law from the court absolutely, that you will not permit your own notions of what the law should be to govern, that you will not say to yourself, "I might have done this", or "You might have done that", but that you will listen to those words of legal wisdom as they flow from the bench, and then you will take that law absolutely under your oath of office and apply it to the facts in this case. And when you do you must remember that it is your sworn and solemn duty to decide this case on the evidence in the case. You must not allow yourself to speculate, you must say, "What did the witnesses say?", and "Did we believe them?", and "What do these things teach us that have been presented to the eye of the jury?"

There are two other things that I want to say about your general duty. And the first of these is that I hope and expect that when you get to the jury room you will not

cease to be the commonsense business men that you were supposed to be when you were drawn from the community, from every walk of life, to hear the evidence and determine the facts. You are chosen because you are believed to be eminently fit to apply the commonsense that you apply in the important daily matters in your business life. And when you come to determine the facts in a case you do not cease to be business men, you do not cease to be commonsense men; you are still those men of the community, exercising that same kind of commonsense judgment, and if you would act upon it in your everyday affairs, in the weighty affairs of your business, you should so act in this case, and that is what is meant by the conviction of a reasonable doubt.

You are not to be influenced by anything that I have said or done in the course of this trial, nor anything that has been said or done by the counsel for the defendants, You are to judge this case solely upon the evidence which has been adduced before you. At the outset, Gentlemen, I wish to take up a few of the things referred to by the defendants' counsel in his summation.

First of all, there was some mistaken ideas of fact and law that I want to dispel. Of course, unintentional (turning to Mr. Steuer). Mr. Steuer referred to the fact that that did not prove that the doors were always locked.

That burden does not belong to the State- -- that they were always kept locked. Suffice it that if the moment when escape was necessary they found that way barred by a door that was locked, fastened or bolted.

He referred to the fact that Dora Tiger had made a statement to the District Attorney's office. An error — no doubt, again, by inadvertence.

He said that none of the witnesses had said that Mr. Brown had opened that door with a key. Another error -- it is not a fact.

I want to correct these mistakes of fact and of law before I proceed further with my argument.

He said that these factory inspectors who came there were the ones to determine whether the doors were open or locked or unlocked. If one of these factory inspectors got to Edna Barry, who was the telephone girl, all the doors could be opened before they reached any one of the floors.

He spoke of the man, the disinterested cigar maker,
who had come from Newark, and I want to turn right here just for the one moment to a page or two in the testimony in regard to that man. I want to read you a line. He worked in that place for nine years, and I think this is significant testimony, (page 1468), "Q. You never went down the

Washington place stairs at night when you were going home? A. I, myself, no. Q. Not during the nine years you worked there? A. No." That is about all the comment I have, although there is lots more that I could make, but the time is so limited that that is about all the comment I want to make on that man's testimony. For nine years that man never went down at night the Washington place stairway.

It was insinuated by counsel for the defendants that if Mr. Brown had inclined he could have testified so and so. Mr. Brown had a record, he had put himself on record in the Coroner's Court, he had put himself on record before the Fire Marshal, he had put himself on record in his statement to the District Attorney, it was too late. Even if he had desired to fit the testimony with the rest of it it was too late. He had burned his bridges behind him.

Mr. Steuer, like every other man who sums up for a defendant, has asked those questions of the air — why didn’t they produce this and why didn't they produce that? And the mouth of the District Attorney is closed to explain when as matter of law that testimony would not have been allowed by the Court, we would not have dared to introduce it, but it is easy enough to say, "Why didn't they?" And I say to you, don't you worry about what we didn't

produce in this case. I will be satisfied if you pay careful attention to what we did produce.

He has insinuated that there is some testimony that this fire went from the Washington place side to the Greene street side. I ask you to put opposed to that testimony the acts of those people on that floor, and take into consideration the features that show the physical conditions that existed immediately after the fire, and weigh, and you will find which in the truth.. He has said that certain witnesses were contradicted by the stenographer. There is a fallacy in that. They were not contradicted by the stenographer. They were contradicted by their own testimony, and the stenographer was only called to state what that was.

He has also pointed out, almost in support of my remarks how under circumstances of this character our own witnesses gave much of negative testimony and that that was not perjury. Lots of it they didn't see that might have happened, and it only adds weigh to the truthfulness of the story told by the witnesses for the People.

Gentlemen of the Jury, it is not disputed — mark you, it is not disputed — that on March 25th, 1911, Margaret Schwartz died of Asphyxiation on the ninth floor where she was employed in the defendants' factory. She was twenty-four years of age and in good health. The

defendants personally conducted and supervised this factory at that place, that is not disputed. We have shown you that the locked door was the cause of the death of Margaret Schwartz, and if you will bear with me for a few moments as I review the evidence that has been proven, we will begin from the beginning of the fire to the falling of Margaret Schwartz at the door of the ninth floor on the Washington place side.

Just before the fire the bell had sounded for shutting off the power. Then came the start of the fire on the Greene street side near the cutters' table, right near the Greene street windows. The fire came there, it came with great force. The first alarm of fire was sent in at 4:45 p. m., and in eight minutes over one hundred lives had been snuffed out.

Gentlemen, no bodies were found on the tenth floor, no bodies were found on the eighth floor, no bodies were found on the roof, nor the fire-escape nor the stairway. Oh, that we could say the same of the ninth floor! There were the heaps of bodies and they had been held in there by these locked doors.

Now, let us stop to review the testimony by which these facts are proven and let us look at the cold facts, let us look at the testimony. There is the testimony of the various employees. It is true that weeks have passed

since it was first given to you and much, of it has faded from your memory, and time does not permit me to take up the bock and read it to you, but I am going to recall the testimony of some employees that were called. Remember, there have been one hundred and fifty-five witnesses called in this case, and over one hundred by the prosecution, so you cannot be expected to remember it all.

It has been intimated that these persons have an interest. Yes. But it is not an unnatural interest. Remember that witness after witness on that stand when they were asked if they did not have a lawsuit, or their father did not have a lawsuit, or the mother did not have a lawsuit, they didn't know anything about it. It was not that venomous feeling of hatred, there was no such actual bias -- there was no bias, in my judgment, shown in their conduct. Their suits are perfectly consistent with their testimony as to the facts, because if these men locked these doors, and they lost the daughter, the father naturally brings his suit, and the sister naturally testifies to the truth. Those proceedings have no relation to this case except so far as they show bias, and I claim that instead of showing bias, they are perfectly consistent with the natural human feelings that would exist under the circumstances. The discrepancy that appears in the testimony of the People in this case is the usual

discrepancy which exists while honest people are testifying to a same fact seen from different standpoints. It is one of the badges of truth when people do not exactly tell the same story. Especially is this true in a case under circumstances like this. A fire, a conflagration, travels with great rapidity and with great speed. Was there much time to stand and observe the conditions of and the events that were transpiring almost instantaneously, one upon another? I rather contrast with satisfaction the testimony of the people in that regard and the testimony of the defendants, who almost before the questions were put to them, out of the mouth would come "Tied with a string to the handle"; that was almost the invariable story and it was told with a similarity that was astounding.

Remember that those employees that we brought to that witness stand were of tender years — most of them under twenty years of age, foreign born; many of them not able to speak the language, not of great intelligence, and perhaps they didn't know all about this place that they would have known if it had not been that they were working at their machines, working and working, and had no time to look up.

Gentlemen, the law does not impose responsibility upon its citizens lightly, and the law that says that they

who behave in the manner that causes the killing of another human being because of culpable negligence shall be guilty of manslaughter is just. There may be no intent nor design to take the life of the person killed, or of another. And so the law says that where a life is taken, even without design, and the person is engaged in the commission of a misdemeanor, that shall be manslaughter. The law has not visited that responsibility upon the citizens lightly; it is the wisdom of all time, and it is the edict of the People of the State, which under our form of government you are here to enforce.

As to the general negligence of these people, remember those tables. And what is the proof about those tables? The pictures that are here at your disposal, the diagram which has been passed around here, and the testimony show that those machine tables like that (indicating Exhibit L) ran from the window to the window, from the window to the other side, with a bare space on the north side to pass by until you got in the middle of the loft. On the Washington place side the space was narrow like that (indicating), and motors were there and boxes and belting, and covering. And, remember, it was Mr. Harris who planned and designed the method of the putting in of the tables on the ninth floor. Yes, of standard type, I will admit, but you can get enough machines of

standard type to make it dangerous to work in any place. No passage ways between these tables — they wanted the motive power to run there, they wanted to use every inch of space. They were about here, there were the baskets there, there were the chairs there. I have already described the Washington end — right up against the windows, on the Greene street end. I call your attention to the picture there, look at that table, look at that table. Where is the chance of a person to escape with them so constructed, in such a manner? And there was the belting, there were the partitions, here was the examining table, there were the finishing tables. And the testimony is that some of these tables were directly in front of the fire-e»cape. There were the cutting tables and the desk, and the figures and the oil-tanks, and the boxes — everything to add to the danger in case of the necessity of escape. And even the Commissioner of Labor himself produced the records that they had not posted the labor law as required by the statute --

MR. STEUER: Now, your Honor, I don't want to interrupt, but it is charged against these defendants, and Mr. Bostwick had conceded that there were no such postings required in their lefts, and I don't think reference should be made to that before this jury.

THE COURT: Very well.

MR. BOSTWICK: (Continuing) These fire-escapes were so they couldn’t get out there, the tables were in front; the windows were only so high, but the tables were so high (indicating). Why, lots of these employees didn't know that there was a fire-escape there at all.

A word about these cuttings. For two months and ten days these cuttings had been permitted to accumulate under these cutting tables; the last lot of cuttings that was removed amounted to more than a ton; it was 2,252 pounds. They had cut in that period of time over 100,000 waists, and the clippings from 100,000 waists had been put in under those bins. It was not an unusual thing for them to neglect those cuttings. Six times a year was the testimony about that they had removed those cuttings. You recall the nature of the stuff that was there; some of it has been introduced in evidence — it was like tinder.

Gentlemen, five previous fires had warned them of the necessity of keeping the conditions in this factory proper; two of them important -- the fire of April, of over $12,000 loss, the fire of November 1902, with a loss of nearly $20,000; that was warning enough for any man to know what he ought to do, besides the three minor fires. These had been the warnings. These things had told them

how important were the means of egress in such an emergency. All these things that I have mentioned must have been important when we think of the number of employees — 200 on the eighth floor, 300 on the ninth floor, 60 on the tenth floor, and these people had to make their escape. There were two doors as you enter; there was the Washington place door, and there was the Greene street door to the two sets of elevators. These were the only means of getting out, besides the fire-escape. I think that the necessity of care in view of these circumstances has been shown. In spite of these facts there was no superintendent at the time of the fire at the ninth floor; there was on the eighth floor, but none on the ninth. A watchman? Yes, performing his duty, but no superintendent. Oh, even if there had been a key there to unlock that ninth floor door, what would have been the use if there had not been a superintendent to have made that way passable?

Now, with this condition the fire spread rapidly, and I say it spread from the Greene street to the Washington place side. This is important. These employees knew but one method of going out from habit. It was the Greene street, the Greene street, the Greene street, day in and day out. And their own witness, who worked for them for nine years said he knew of no other way to go out, or never went out any other way. And the impulse was to

rush to the only method that they knew of, or to the Greene street door. The fire was there and they got over to the Washington place side, seeking any method of escape.

For a minute let us stop. Let us see the nature of the defense that has been interposed here. There is a denial of some of the important facts, and they have produced that denial by three classes of witnesses; first, those who are still working for and dependent on Harris and Blanck for their living; second, those who are doing business with them — some of them as high as $75,000, with their big orders; and, thirdly, the relatives of the defendants. And it has been admitted that they would go to great extremes under those circumstances, and confessedly and with more force we can argue the same of the defendants themselves.

As to Greenspan, I am not going to devote any time. He was unfortunately characterized during the testimony in some way or other as the liar. I still entertain that opinion of him and of his testimony. As to Brown, I think he made a pitiable spectacle on the stand -- even before he refused to tell his salary. I haven't any time to spend on Brown or on Bernstein. Bernstein himself would be responsible for some of this if the truth were told, and so would Brown, and so would Stern. If they

told the truth as I believe it to be the law would visit considerable responsibility upon them. And save Horton, why the man denied everything that he had stated in the District Attorney's office.

The only defense that amounts to anything at all is the testimony of May Levantini, of Ida Mittleman and Annie Mittleman and of Greenspan. That they went to the door and found that door open on the ninth floor. That in my judgment is the only defense there is, and I ask you to pay special attention to my criticism of that defense.

First, I am going to speak of Ida Mittleman, and I am not going to bore you with a lot of this testimony. There is just a word or two and I would be derelict in my duty if I did not call it forcibly to your attention: "Q. And has your talk with May Levantini made the thing fresh in your mind? A Yes, sir. Q. And haven’t you talked with anybody else to make the thing fresh in your mind? Haven’t you tried to get it fresh in your mind? A. Well, my sister did. Q. Didn’t you talk with your sister about it? A. Yes, sir. Q. Hasn’t what she told you made it fresh in your mind? A. Yes, sir. She told me it all. Q. She told you all about it? A. She told me about how the two of us did go in the hall, and that is what I do remember, and about the door; she said she seen me open it.”

Now, you can just see what happened in this case. This little girl has not the single present recollection of anything that happened at the time of that fire, but she admittedly says that her sister has told her all about it, and she is quite sure that her sister has told her the truth, and she told her that "she seen May open the door." There is not a doubt that she believes that story. She believe that to be true, but you can [see?] it is all the reflection of what she has been told as to what happened, and not her own recollection.

Let us go now, for one moment, to Anna Mittleman, and let us see what Anna says: “Q. You know May Levantini? A. I do. Q. Did you talk to her to-day? A. No, I have not seen her. Q. Did you talk to her yesterday? A. I did. Q. And you had a talk about what happened at that door, didn’t you? A. Yes, sir. Q. And May Levantini told you what happened at that door? A. She told me she opened the door. Q. And your sister was there at the time was she not? A Yes, sir. Q. Did your sister open the door? A. I can't tell you that. Q. You don't know? A. No, sir, but I believe that May did. Q. You believe that May did? A. Certainly. Q. And you really believe that, don't you? A. I do. Q. You are convinced of it, aren't you? A. Well, that is, I said I don't remember, but being

that my sister was after May, then she said she was at the door first. Q. And that is the reason it is perfectly clear, isn't it? A. Certainly.”

You can see just what becomes of the two Mittlemans and their testimony. That is what becomes of their testimony. Anna tells May and May, tells Anna, and all this is after they have seen Bernstein, but they don’t remember anything about it, they simply are convinced from what they have heard that Levantini was telling them the truth, but they have no present recollection. Anna says that Ida told her so, and vice versa, and they both believe it because May Levantini says that she went to the door. So you can strike out of the entire case the testimony of the two Mittlemans.

Now, as to May Levantini, I an not going to start to take up all the time. There has been some intimation that the District Attorney did not call all the impeaching testimony, and by that I mean this, that when persons made statements to the District Attorney and they were inconsistent, not the same as they told on the stand we have been charged with not binding all those inconsistent statements before the jury. Gentlemen, you are the best judges of the reason of that. You saw that as to some of them it was not worth while and you saw me dismiss

them by saying "That is all. I was not going to bother with it. I did bring to the stand every bit of impeaching testimony which I thought was necessary to convince you, but some of it was self-evident. Some of it was this Levantini. This Levantini lied on the stand. That girl went to the Italian Consul’s office and she told that man Franco when she was talking to him about the loss of his little Tiny that she -- she did not say "I opened that door". No, no, it was not until after she had seen Fletcher that she then stated that she had opened the door. And then you have the testimony of the Levantini girl and the Mittlemans trying to get together a story that agreed and they couldn’t, and how they had discussions and lengthy discussions, but they couldn’t convince each other sufficiently to go on the stand and tell the same story. The Mittlemans simply were telling their story from hearsay; Levantini is the only one in the case beside Greenspan, and Greenspan's discrepancy is so great that I am going to ask you to take his statement to the jury room if you like and read what he has got to say. Let us stop for one moment as to him, just one moment - I am not going to read you anything here but just two words, - "Were your wages raised between the time of the fire and the time you quit? A Yes, sir.” Yes, he is friendly to the defendants, they have kept him in their employ and raised his

wages. And I call your attention to one statement alone made by Greenspan, and that is this: "You remember my asking you this question and your making this answer to me, ‘You say that the door was locked’ (referring to the Washington place door)? A. ‘Yes. No, I never said it.’”

In other words, although he did say it to me, and although his statement proves that fact, he went on this stand and perjured himself, and you can dispose of his testimony, and once you have disposed of that testimony you have disposed of every bit of the defendants’ testimony that that door was open at the time of the fire, because the Mittlemans’ testimony was hearsay and imagination and Levantini and Greenspan are the only two human beings of all that were in that factory that testified to that fact. They are the only two people.

Let us contrast the People’s case. What have we got about that door being locked? We have got those who saw and tried it in vain, who put their hands on that handle and who turned it and pulled it in an effort to get out that door. We have got that testimony, and I cannot stop now to go over it. But some of you will recall the faces of some of those little girls on the stand as the row of names of witnesses is read. You will recall Anna Gullo, Ida Nelson, Yetta Lubitz -- and a more convincing witness never told a tale on the stand; Ethel

Monick — that shrewd cross- examiner (indicating Mr. Steuer) never broke one word of her testimony; Beckie Rothstein, Rose Mayers, Sophie Zimmerman, Katie Weiner, Celia Walker, Lillian Weiner, Dora Axelrod, Beckie Bursky, Rose Glantz — they couldn't break her together, one with the threat of discharge, and the other with his cross examination; Ida Singer, Sarah Friedman, Fannie Selmanowitz, Mary Damsky, Ida Deitchman, Gussie Koppelman, Lena Yaller, Lena Zwick.

Are all these an army of little perjurers brought here to say that that door was locked when it was not, and to dispute the lying Greenspan, self-confessed, on this stand? Compare his statement in the testimony, and compare the statement he made to the District Attorney. All this army of little workers must be stamped as perjurers to give credence to the testimony of Levantini and Greenspan.

Have we anything beside that testimony? Oh, yes, we have got the custom of how they went out at night. They all told that. It was Greene street. Even the man, their witness, who worked for them for nine years, testified that he never went out any other way. Have we got any other testimony? Oh, yes. There were all those who tried that door before that day, even though they may be mistaken

in thinking it was always locked where they had their heads down at the machines and couldn't see people come in and out. Have we any other proof of that? Oh, yes. The condition of the stairs, the Washington place treads were as if never used, and the Greene street treads were worn away by that little army of workers as they left and went down that Greene street stairway at night.

Have we any other evidence? Oh, yes. The watchman standing at the Greene street door and watching them as they passed out. Have we any other evidence? Yes. There were two that didn't know, and testified they didn’t know there was a door to the Washington place side, and it is admitted. Is there any other evidence? Yes. That partition found near that place. If that is not overwhelming, if that does not force you under your oath of office to find that the case has been made out by the State I don’t know what will, unless it is this. You cam strike from this record every bit of human testimony and you can take that mute testimony that cannot err, and that cannot lie if it would. I ask you to look at that great monster set up there (pointing to the burned framework of the door, being People’s Exhibit 29) that mute testimony. I ask you, Gentlemen of the jury, to go and examine that now, if any of you do not remember the part of it there by that casing, that which was never touched by fire. It

is on the record, because Mr. Moore examined it and he testified about it, but I want something more than Mr. Moore's testimony; I want your observation at that part, and you will see there are clear parts of it that were never touched by fire. That cannot lie, that is a truth telling bit of witness. That door was closed. I ask you now to look at this sill of the door that I have produced. And I state to you that this is another bit of mute evidence that cannot lie to you. This is demonstration, this is truth, and I don't care what your feelings may be you cannot get away from it, you cannot get away from this kind of evidence. There, Gentlemen, is the sill of that door, there it is. It is off the inside of the factory and that is on the outside of the factory (indicating the two opposite sides of the sill). What barred the flame there? The door. The same door that preserved the side of that casing (pointing to Exhibit 29). These bits of evidence speak as if they came from the tomb.

There, Gentlemen, is a piece of evidence that I would like you to take and look at, that you can see whether the fire was on the inside or on the out.

The great piece of evidence, though, in this case is this box, this People's Exhibit No. 30. Gentlemen, all

the locks have been accounted for in that building. This was not a lock on the dressing room, because it is not a padlock. There were padlocks on the dressing room. It is not on the dressing rooms or partitions put there by Puser, because he said that was seven-eighths of an inch in thickness. That couldn’t go on seven-eighths inch thickness of wood. All the dressing rooms were open. It could not have been on a door that was open. It was not on a toilet room because they were all open, and it could not fit. The only place on God's earth that that lock and that stile could have been on was the Washington place or the Greene street door. And although bitterly in the early part of this case we sought to prove that it was on the Washington place side and not on the Greene street side, it was not until their own expert acknowledged it was on a lefthanded door and it could not have been on a righthanded door that the final link of the proof was complete. That piece of wood with that plate annexed to it and with that handle and with that lock passed through that fire. And where was it found? Where it naturally would be expected to be found — on the Washington place side, just as near as anything would be after they had taken the bodies out and lowered them and moved the stuff to get the bodies out. And by whom was it found? The eminent Commissioner now of the State,

Mr. Moore, then a consulting engineer, with no interest excepting his professional work. Not there to find these things. But, Gentlemen, oh, the significance of the testimony, and after all, perseverance can accomplish something. We proved to you that there had been a fire in 1902. That Clark, whose special business was to repair fire damages had been put on this job by the insurance companies, that Baxter was the man immediately in charge; that Baxter ordered some locks from the Reading Hardware Company, the Reading Hardware Company, delivered some Reading Hardware locks to Mr. Woehr, Mr. Woehr with his records came here and proved the taking of those locks from the Reading Hardware Company to Woehr's store, and Mr. Hunter goes to Mr. Woehr's store and puts the same locks that the Reading Hardware Company had handed to him and he takes one of them up and puts it on this door, and this is a Reading Hardware lock, the same kind and make, with the same stamp on it, identical with the one that was sold on December the 2nd, 1902. Why, if there was the shadow of a doubt it has been cleared up by this evidence which is demonstration. Away with this tommyrot, and scientific testimony as to whether this was on that piece of wood at the time of the fire! That won't stand a moment. Gentlemen, there is my proof. You must look at

it, you must examine it, and if you are men of common-sense, if you are men of anything that indicates your right to sit on an American jury, you have but to look at that great piece of evidence to know that that was the lock that barred the people. Who would believe that that lock was not on that door at the time of the fire? Does it take expert testimony? It is true that even in the course of this trial this lock has become loosened, it in not in the condition, so far as the tightness with which it was attached to the stile is concerned, that it was in when first seen, that has followed of necessity, the witnesses have examined it before the trial and at the trial. The jury has examined it, it has been put in the box and taken out of the box, it has been loosened, that is true, but there does not live the man who does not believe that that went through that fire, and if it went through the fire, it went through on the Washington place door and the ninth floor. Is there anything to corroborate it? With it was the disinterested witness Reinhardt, the fireman first there. What did he find? He found the bottom and the sides; there it was, and he kicked it in, he kicked it in, the sides went down. This handle may have been broken then, and this may have been melted, it is true. I don’t know. I don’t care how that handle got off. It was not

taken off with a blow pipe, it was taken off by accident, fire or heat — it is immaterial to me. That (indicating dead belt on lock on People's Exhibit 30) is the deadly thing we are talking about and not the missing handle. Was it found there? Are we going to discredit Reinhardt and Dunn -- one of the best witnesses in the case — and Meehan and Flynn and Moore and Saveno and Tortia? Are you going to throw all these aside, these disinterested people who were there and know about the finding of the lock? And its existence upon the door before?

Gentlemen of the jury, why was that door locked? Why was that door locked? Was there motive? Yes. It was to search these poor employees' bags as they went out at night; that is the reason that door was locked at the time they went out. I don't say it was locked nine years ago, but we have Mr. Harris's testimony that they found six girls stealing something and they had them arrested. That stealing has got to stop,-- that stealing has got to stop, -- and something must be done to stop it.

Gentlemen, on this part of the case and without saying another word, although I have got something else I must say, I could stop, never in the history of a prosecution in a criminal Court did the defendants themselves adduce such magnificent and convincing evidence to the jury as when Mr. Blanck, still thinking of the stealings,

and still thinking of the taking of the things away, produced this bag in Court (Defendants' Exhibit E) , with his shirtwaists, he himself producing it. It had never left his mind, and it was his main defense in this court room, -- "I had a right to protect my property." Nothing ever proved in this world before -- and I doubt if it ever will hereafter -- what was in that man's mind, because you cannot look in people's minds ~- nothing will ever prove it so clearly as he himself, almost by magic producing it and offering it for inspection. Why, it was the most convincing thing, and the District Attorney in the performance of his solemn duty immediately offered it in evidence. And I ask you now to recall not so much the bag on the premises, but what you saw at that table, and if that don't convince you evidence never will convince mortal man.

Gentlemen, there is a matter of demonstration in this case, and that is that fire did not come upstairs from the eighth to the ninth floor, and there don't live the man who can gainsay that it did not. This (indicating) is the handrail on the eighth floor landing. You are on the stair-well side and I am on the loft side of this piece of wood as it was situated on the landing on the 25th day of March, 1911, at quarter to five o'clock. Here there is a door, the door that Brown opened, and on

this side of the door are girls, according to the theory of the defense pent up against the door. I think that is what Ida Cohen said. Well, whether the door was locked or not they were this side of the door. Now, there was no fire coming through that door at that time because the people were standing here; Brown had not opened the door. So this side of the wood was cleaner than that side of the wood. Now, that is demonstration. No fire ever came up the well, because that is there. It don't lie to you. It talks to you, Mr. Juryman, and you, every one of you, it says, "I was there, I was there, no fire touched me." And you have got to believe that piece of wood. There was no fire on this side because the door was there and Brown was there and the girls were there, and there was no fire there, so that that handrail belonging to that door was closed, was just as good as that part which is there, and you will find that even the varnish has never been blistered. You cannot have a thing like that with varnish on it and not have it blistered and still go through, flame and fire, that is impossible. Brown testifies that every girl went through that door, and still there was no flame. Mind that. He testified that when he was in the loft, the last person to leave it, he could not see the policeman, but just as soon as he got to the door — that is near this piece of wood on this side — he could see the

policeman, because up to that time there was no smoke and the was no flame.

Now, let us see what the conditions were from there to the ninth floor where these people were pleading to get out. Here is mute testimony (indicating another handrail); this don't lie; you can't say that it tells an untruth. Look at that. Is that the flame that was burning people up? Now, that is the only piece of combustible stuff, with the exception of those two pieces there that there was in that stair-well. Is there any flame running up that stairway, when that is the only thing it can go up? Can you send a message by electricity when there is nothing to send it by? Can you send water through a pipe when there is no pipe? There must be a medium. It is not like wireless telegraphy, -- fire don’t run that way -- there has got to be combustion, there has got to be oxidation. Gentlemen, I ask you to take a look at it, I ask you to take that and see if you can find a bit of the varnish that has even been blistered by heat between that eighth and ninth floor.

Now, of course, these doors were down at a time when Reinhardt and Dunn were fighting the flames. Of course at that time when the flames were licking out, when these flames had gone fifteen or twenty minutes and passed away, that is a different thing. That is when

even this little black (indicating) came here, but never heat enough in that stairway even to blister a single piece of a handrail. These are the witnesses that are speaking by the act of providence from heaven, because it is nature and the laws of nature that appeal to you when you see these things. They are the physical objects that tell you that no fire and no flame could have been between that eighth and that ninth floor. And when the people were going out of that eighth floor, when Brown was letting them out, there was no fire in that hall. And the ninth floor there, there is no burn, there is no burn. Of course after the door fell away then the flames licked out. No fire and flame would have burned anybody if that door had been open on the ninth floor.

I ask you to look at the bulb of the electric light still there, with heat from the outside of the bulb and it is not broken. And I ask you to recall the testimony on that point. The only thing that is opposed to that is the statement of Chief Worth. I have the greatest regard and respect for Chief Worth. He is a witness that I would believe at any time on any subject, providing he had a certain amount of opportunity for observation. In other words, if Chief Worth told me there were twenty people there, and he had been there, I would believe it if I only thought I saw twelve. I have the greatest faith

in his credibility, and a finer man, a finer member of the fire department I don't know -- and I know them all -- but Chief Worth testifies he was down on the street, and what he was telling about was a guess of what was happening in that stair-well. And does it amount to a row of beans, when you have got the testimony as opposed to that of the living human beings that were in that stairwell at that time? In answer to Chief Worth's -- and Mr. Steuer put the words in his mouth, "And from that you infer that the flames had gone up the stairs, is that the idea?”

MR. STEUER: That is a misstatement. Those words were used en his direct examination, and they were stricken out. You must not make this misstatement.

MR. BOSTWICK: I read from the record: "Q. Where did you see the smoke, this volume of smoke on the ninth floor?" "And from that you inferred that the flames had gone up the stairs, is that the idea? A. Yes, sir."

Now, I do not care about Chief Worth, because there is a lot of testimony here. Oliver Mahoney swore -- you have all the testimony of the three men. You have the men that first got to the eighth floor, that they went up, and all the testimony, but the very best testimony you have get is right here, these exhibits. That negatives anything Worth said about it. Could flame have gone up that

stairwell, if nothing there was combustible? The stairs are the same to-day as they were on the day of the fire. These very things taken off since this trial commenced, they had not even repaired them, they looked good enough to stay right on the building, they never repaired them, although these others of course had to be replaced, because they were here, but these others (indicating pieces of handrail) had never been repaired on the building, and you know that no flame went up and down that stair-well with those mute witnesses (the exhibits) telling you the true story.

Gentlemen, you recall the testimony of Katie Rabinowitz, or Mrs. Gartman, because she was one of the last witnesses to testify. You remember how she told you that she saw Margaret Schwartz fall up against the partition; you remember how she accounted for every step at the time of the fire on the ninth floor; you remember how she testified how that door was tried and there was no chance to get out, it was locked. I do not believe that any juryman sitting in that box will forget as long as he lives the story of Kate Alterman of the tragic last moments of Margaret Schwartz. A truer story never was told than that. You remember they had been friends, Mrs. Gartman, Margaret Schwartz, the deceased in the indictment, and Kate

Alterman had been friends. You remember how she called her Kate, and she then called back Margaret, and there was no sound that came after that. She died at that ninth floor door and they were passing out of the eighth floor then and these were the conditions between the eighth and the ninth floor, (pointing to the handrail exhibits).

Yes, Brown opened that door on the eighth floor and there /were no dead bodies there, but there were on the ninth. The stairs were not burned while the doors were up, and the rails proved it, the pictures prove it, the sill, the stiles, the case proves it, and the lock itself proves it, besides all the human testimony that there is in this case.

Gentlemen, believe this testimony (pointing to the handrail exhibit) , believe the testimony of these honest little girls that were here, and that told their stories from their hearts, believe them, as you must, and one of the most awful and greatest crimes of history has been proven and is now to be punished in this Court. The testimony of those honest children is before you and you cannot get away from it in this case, and then these things (indicating the handrail exhibits) have brought no lawsuits. These things have no bias. Here are the photographs, here are the rails, here are the sills, there

is the casing, the material that they were working with, the pocketbook from Blanck, the lock, that lock shot, and that bolt there, that held them back — these are the mute witnesses that are speaking to you, and that tell you that every single item of this crime has been proven to mathematical demonstration.

Yes, in the words of the defendants' counsel, 1911 has been a bitter year for the poor families from whom these dear ones have been taken by the neglect of these defendants. Margaret Schwartz died, Margaret died at the Washington place door on the ninth floor because that door was locked and that bolt held that door. Safety and all was on the other side for her and the others, and this safety was kept from her. Why? To prevent these defendants, who had five hundred people under their keeping -- their lives -- from the paltry expense of a watchman.

I have done my duty. The People now look to you to do yours. God grant that you will.

THE COURT: Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial or to form or express any opinion thereon, until the same has been submitted to you. You will not allow any one to talk with you about the case, nor talk

with any one about the case, and you may now leave your seats. Those in the body of the room may remain seated, and the Court will take a recess until twenty minutes of two. Jurors may now leave.

(Recess till 1:40 p. m.)