

START

1915

CASE

CASE #1915

1915

COURT OF GENERAL SESSIONS OF THE PEACE.

City and County of New York, Part II.

THE PEOPLE

vs.

HERMAN H. SCHIFF, indicted as
HARRY SINGER.

Before:

HON. JAMES T. MALONE, J.
Clerk of Court.

234

New York, June 24th, 1914.

Indicted for seduction.

Indictment filed May 6th, 1912.

Appearances:

DAVID M. DISTRICT ATTORNEY MORRIS KOENIG, FOR

THE PEOPLE.

LEWIS H. LOSNER, WSO., FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,
Official Stenographer.

CASE #1915

177

THE PEOPLE'S TESTIMONY.

New York, June 24th, 1914.

MR. POSNER: Before the jury is empaneled, if your Honor please, I would like to make a motion to amend the name of the defendant on the indictment. His name is Herman W. Schiff. His real name was made known to the officers within twenty-four hours after his arrest.

THE COURT: Motion granted.

(Eleven jurors were called and examined, but not sworn, and the Court, at 4:45 P. M., admonished the jurors in the box in accordance with Section 110 of the Code of Criminal Procedure, and adjourned the further trial of the case to Thursday morning, June 25th, 1914, at 10:30 o'clock A. M..

---ooooo---

CASE #1915

NEW YORK, June 24th, 1914.

MR. POSNER: I ask that the officers be excluded, if your Honor please, from the room.

THE COURT: The witnesses on both sides will retire from the room and remain out until they are called.

MR. POSNER: If your Honor please, I have only character witnesses, parties of the defense. I suppose your Honor does not care to hear them.

THE COURT: Yes, I will hear them in all cases. The witnesses on both sides are excluded.

(The Jury was then impaneled and sworn.)

(Mr. Koenig opened his case for the People.)

THE PEOPLE'S EXHIBITION.

HARRY JACKSON of 135th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOENIG:

Q Jackson, speak up loud, so that the last gentleman can hear you. How old are you? A Eighteen.

Q When were you eighteen? A Last November.

Q And on the 24th of May---on the 3rd day of May, where were you working? A 530 West 144th Street.

Q And between what avenues is that house? A Amsterdam and Broadway.

Q What were your hours? A From six o'clock at night

CASE #1915

until eight in the morning.

Q And how long had you been working at that apartment?

A About four months.

Q And what was your business, that is, what was the place you held? A Elevator runner.

Q Now, in the early morning of that day will you state whether or not you were outside of that building? A Yes, sir.

Q And what time of the morning was that? A Between three and half past.

Q And what was your purpose in being outside of that building?

MR. POSNER: Objected to.

BY THE COURT:

Q Was that the third of May? A Yes, sir.

BY MR. KOENIG:

Q Was it the third or the morning of the fourth? A It was the third.

MR. POSNER: I object to his purpose in standing in the street, outside of a building.

THE COURT: Yes, I will sustain it.

BY THE COURT:

Q You were out there on the street at 3:30 in the morning? A Yes, sir.

BY MR. KOENIG:

CASE #1915

Q Did you see this defendant at that time? A Yes, sir.

Q Had you known the defendant prior to that time? A No, sir.

Q Now, state the circumstances under which you met the defendant? A He was walking---he was going towards Amsterdam Avenue, and I was standing outside, and I spoke to him, I said, "Good morning", and he answered, and said, "Good morning" to me, and he walked up a little ways and he turned around and he came back to me and he said did I want to make five dollars. I said, "How?" He said, "Come on inside and I'll show you." I went inside and set down and he pulled out his penis, and he says, "I'll give you five dollars, if you will," and I said, "No, I don't want to," and he said, "Come on, you won't get caught." And so he said he would give me the five dollars, and so I started in, just as I started in, the officers walked in.

Q Now, when you went into the building, what part of the building did you go to? A The anteroom.

Q Called the sitting room? A Yes, sir.

Q And where did you seat yourself? A In a chair nearest to the window.

Q And where did the defendant go? A He was standing up against the table.

Q And near to you? A Yes, sir.

CASE #1915

Q And, after he had made the statement to you that you have told us about, just tell us what he did, just describe.

A Well, he pulled out his penis and he walked up to me and he said, "Come on", and I started in, and the officers came in.

BY THE COURT:

Q Started in what?

BY MR. KOENIG:

Q You did what? A Put it in my mouth.

Q Did you have it in your mouth? A Yes, sir.

Q And how long had this thing been taking place before you saw the officers? A About three minutes.

Q And can you state whether or not---I will witness that. At the time you saw the officers, describe the position, the relative position, of yourself and this defendant.

A Well, he was standing right in front of me, with his penis in my mouth, and I was leaning right over him (Illustration).

Q Can you state whether or not at that time you looked up? A Yes, sir.

Q And what did you see or whom did you see? A I saw the officers.

Q How many? A Two.

Q And then what took place? Tell us? A Why, he jumped away.

Q Who did? A Singer.

1177
CASE #1915

Q What? A Singer jumped away and went around to the other side of the table and sat down. The officers asked us if we were doing anything and we said no, so they said, "We think we had better lock you up anyway, because you were doing it."

Q Because you were doing it, sir?

Q And will you state whether or not you had anything with your penis? A I did not.

Q Now, after being placed under arrest, will you state whether or not you had a conversation with this defendant?

A I did.

Q Where did you have this conversation? A At the 121st Street Court.

Q Was that the next morning? A Yes, sir; Sunday morning.

Q You were both arraigned, were you not, before the Magistrate? A Yes, sir.

Q State what conversation, if any, did you have with him? A Well, he told me not to plead guilty, Singer told me not to plead guilty. He told me not to throw him down. He said, if I did, why then, he would get me. He said, "I'll get you. If we get out of this I'll give you some money."

Q Was he present with you in the Clerk's Office when you were arraigned? Was he there? A Yes, sir.

170
CASE #1915

Q And was that conversation which you have now stated after you had been brought before the clerk or before?

A No, sir; before.

Q Now, you were indicted, charged with the crime of sedition, were you not? Yes, sir.

Q And you pleaded guilty to it in the second degree. A I did.

Q On the 24th of June, 1941, sir.

Q This year, 1941, sir.

Q Before Judge Nichols, sir.

Q And you pleaded guilty to it in the indictment charging you with sedition, sir.

MR. KOENIG: You may leave.

CROSS EXAMINATION BY MR. ROSEN:

Q As soon as the officers came in, and said, "What are you doing here?" you said, "Nothing," did you?

A Sir?

Q (Question repeated) As soon as the officers came into that reception hall and said, "What are you doing here?" you said, "Nothing"? A No, I didn't say anything. I just looked at them?

Q Didn't you deny immediately that you were doing anything? A Not immediately.

Q Didn't you? A Not immediately.

Q How soon after they entered the room did you deny that?

CASE #1915

Q you were doing anything? One minute, would you say? A After they asked us a couple of questions.

Q Oh, so that when they came in and said, "What are you doing here?" You answered, "Nothing at all." A I didn't make any reply at all.

Q You didn't make any reply at all. A No, sir.

Q And after they asked you one or two questions, you said, "I am not doing anything here." A I said, "We are not doing anything."

Q Then the officer said to you, "Get out of that lit- the reception parlor toward the hallway; didn't he? A No, he didn't.

Q Didn't they both take you out and have a little talk with you outside? A No, sir; they didn't. I started across to apartment 3.

Q And they stood and spoke to you at that apartment 3; is that true? A There was one spoke to me.

Q Didn't they call you to apartment 3, and then talk to you? A No, they didn't.

Q Who went out first to apartment 3? A I did.

Q Did you call the officers after you? A I did not.

Q At any rate, after you had told them in reply to a question or two that you had not been doing anything, you and the two officers stood by the doorway of apartment 3? That is correct? A We stood there while he was asking me

CASE #1915

a question, and I walked back again.

Q Well, did he ask you several questions while you were standing by the door? A He asked me one question.

Q And you denied ever having been doing anything? A Yes, sir, I did.

Q And then you walked back into the room; didn't you?

A Yes, sir.

Q And Mr. Whiff was in that room, wasn't he? A Yes, sir; he was.

Q He had left one side of the room by the window and had gone to the other side of the room and sat down; had he not? A Yes, sir.

Q Then he jumped up, didn't he, and also denied that anything had been done? A Yes, sir, he did.

Q And the police officers asked him what he was doing there, didn't they? A Yes, sir.

Q And do you remember the reply he made? A They asked him if he lived in the house.

Q And do you remember what he told them he was doing there? A No, I don't know what he told them he was doing there.

Q Well, let me ask you another question across your memory. Do you remember his saying that he had returned from downtown, where he had been spending the evening, drinking, and was on his way home, when you spoke to him? A He made that

CASE #1915

1703

11
reply outside, not there; in other words reply outside, after
we had started up Amsterdam Avenue with the officers.

Q You were not at all excited about being arrested,
were you? A At all excited.

(Question repeated. A Yes, I was excited.

But you can remember just exactly where, and at what
point the particular statement was made by the defendant?

A Outside. After we had started up towards Amsterdam Ave-
nue.

Well, whether it was inside or outside, you had started out
or outside, or inside, you had said that he did say that much;
don't you? A Yes.

Q And do you remember him saying that you not only
had spoken to him first, and had asked him if he wanted a
girl, and, if so, you could be one for him? A No, I didn't.

Q Well do you remember that he said that? A He said
it?

Q Yes? A No, he didn't.

Q Didn't he say that? A No, he didn't ask for
no girl.

Q No. I am asking you about what he said to the Po-
lice Officers, when they came back from this entry to this
room 3, or apartment 3, and asked him about the matter.
Didn't he say that he was staggering home, to his home,

11789

CASE #1915

13
three doors below, and that you spoke to him and asked him
if he wanted a girl; didn't he tell the officers that? A
No, I don't remember him saying that.

Q You say you don't remember his saying that? You
won't say that he didn't say it, will you? A No, I won't
say that he did say it or didn't say it, because I don't
remember.

Q Don't you remember saying that what was true, that
you had asked him to come in, because you thought you could
get a girl for him? A I don't. I don't.

Q Don't you remember his saying further that you
and him were standing there talking about what you could get
a girl for him for, when the police officers came in? A
No, he didn't say that he was standing there. We had been
out there about two minutes then.

Q And didn't he say to the police officers that he
was talking about that, for those two or three minutes that
he was in the room with you? A Yes, he told the officers
that.

Q And he told the officers that he was talking about
the price that you could get a girl for him for? A No, sir;
I don't remember him telling the police officers, but
I do remember his telling the officers that he was
talking about how much he would be paid for me to get
him a girl.

CASE #1915

Q And you said before that you didn't remember his calling about you getting a girl for him for the police officers? Now, do you remember that he said that? A Yes, sir; I don't remember his saying that I was to get a girl for him.

Q And he say who was to get him the girl? A No, he didn't say who was to get him the girl.

Q And did he explain why he should be discussing with you how much it would cost him to get a girl, if you had nothing to do with it?

A. KOENIG: I object to that, he calling for a conclusion, and for the operation of the witness's mind.

THE COURT: Objection sustained.

BY MR. POSNER:

Q Did he tell the police officers why it was that he discussed with you the question of how much he would have to pay to get a girl? A Yes, he told them why it was.

Q (Question repeated.)

MR. KOENIG: Objection.

THE COURT: Sustained.

MR. POSNER: Exception.

BY MR. POSNER:

Q At any rate, you now do remember that he told the police officers that he discussed with you the question of how much it would cost for him to have a girl? A He did.

CASE #1915

tell them that.

BY THE COURT:

Q Did he say to you that he talked about a girl? A He said he was talking to me about a girl.

BY THE COURT:

Q He said he was talking to you about a girl, is that right?

A Yes, sir. He was talking to me about a girl, and he didn't mention any other girls, and he didn't mention any other officers, and he didn't mention any other things.

Q You didn't deny it, did you? I didn't deny it, what he said to the other officers, in your presence? A I didn't deny it at that time.

Q You didn't deny it the first time? A No, sir.

Q Not at that time? A No, sir.

Q Well, up to that time you hadn't had---he hadn't had a chance to tell you the story, had he? A No, sir; not until the girl was talking, but I could see him when he was---

Q One moment. You now answered: You had never seen him before, had you? A Yes, I hadn't.

Q Weren't you waiting outside just to pick up men and see if you could get them to go to girls that you were looking after? A No, sir.

Q Hadn't you made it a custom, now and then, to pick

CASE #1915

11-1-17

Q Now off the street and see if you could get him to go to
girl? A I have now.

Q Didn't you intend to take him down to a girl a short
distance below, on 135th Street or 136th Street, a short dis-
tance from where you were? A I didn't.

Q Didn't you intend to say that that is what you
intended to do, because you couldn't get a girl in the house?

A KOENIG: I don't know that.

THE COURT: Overruled. I will leave that
standing.

BY MR. POSNER:

Q To whom did you make that statement? A I made
that statement to my lawyer and I made it in the Police Court.

Q In the Police Court? A Yes, sir.

Q That you intended---that you couldn't get a girl in
the house, and, therefore, intended to take him to a place
in 135th Street? A That's the statement that I made.

Q Then he was asking you the question of you
getting a girl for him.

MR. KOENIG: Object to it as calling for a con-
clusion or an opinion.

THE COURT: Well, he may answer it.

BY MR. POSNER:

Q (Question repeated) A No, I wasn't discussing it
with him about that, but that's the statement he made to the

CASE #1915

16
police officers.

Q But that is the statement you also made to the police officers and to your lawyer is it not? A Yes sir.

Q When you first saw him, that night, he was---was he under the influence of liquor, wasn't he? A He was not under the influence of liquor, ---you could smell it, but he wasn't staggering, or anything like that.

Q You could smell it when he was drinking, when he spoke to you and when he was on him, wasn't it? A Yes, sir.

Q His gait was unsteady, wasn't it? A Yes, sir. He had his right sense: and he was walking right.

Q He was walking right? A Yes, as far as I could see.

Q And you, standing out there, spoke to an older stranger at three o'clock in the morning, who seemed perfectly sober to you; is that the fact that you want us to understand? A Yes, sir.

Q Do you make it a habit to talk to people who pass by your house at three o'clock in the morning, who are sober?

A Well, there is some that I don't speak to. There is many that I don't speak to, but he passed pretty close to me, and I said, "Good morning" to him, just to be sociable.

Q And you expected him to be sociable with you, this man that you had never seen before? A Well, I didn't ex-

CASE #1915

17
peet, but he walked right in front of me, pretty close to me, and I said, "Good morning".

Q And how far ahead did he walk before he turned back?

A About ten feet.

Q About ten feet? A Yes, sir.

Q Isn't it a fact that at that time he turned around and said to you, "What's that you said to me? Do you remember his saying something like that to you in the street?"
A No, he didn't say anything like that.

Q Isn't it a fact that when he passed you he did say, "Do you want a girl?" And not, "Good morning?"
A No, I didn't.

Q Well, but you do remember that he stopped after he had passed you about ten feet? A Yes, sir.

Q Now, what is your recollection as to what he said when he turned around? Didn't he say, "What's that you said to me just now?" or something like that? A No, he didn't.

Q You didn't stand outside for very long, did you? A I had been standing there ever since around one o'clock.

Q I am speaking of the time that you and he stood there. You didn't stand there very long, did you? A No, I didn't.

Q And then you walked inside, did you? A Yes, sir.

Q Through the court yard into the hallway? A Yes, sir.

CASE #1915

Q And you stood inside this reception hall or reception corner, for how many minutes, before the police officers came, would you say? A I didn't stand at all. I sat right down.

Q And how long did you stay there before the police officers came, you two? A It was about five minutes altogether, after we got in there.

Q After you got in there, sir.

Q Now, you have testified that you did call your attorney, as well as to the police officers, that you were starting to get some woman down in 125th Street, did you not? A I did.

Q And you didn't get a chance to get that woman in 125th Street, did you? A I didn't have any intention of getting anybody.

BY THE COURT:

Q What you said was not true; is that correct, sir.

BY MR. POSNER:

Q And do you remember any other lies which you told your lawyer or the police officers, concerning what you have already testified to, up to this point?

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

THE COURT: He may answer.

CASE #1915

BY MR. POSNER:

Q. (Question repeated) A. No, I don't.

Q. Have you been in trouble with the police before? A. No, I have not.

Q. Haven't they been watching you? A. They have not.

Q. Haven't they accused you generally of getting girls for men who pass by at night? A. They have not.

Q. You were intending to testify in this trial as a witness, were you not, in behalf of the defendant? A. Yes, I was in behalf of the defendant.

Q. Yes, for the defendant. A. I was intending to do that at first; weren't you? A. I was intending to go to Court to clear myself.

Q. Well, to testify in his favor? A. No, more in his favor than my own.

Q. In other words, you were intending to testify for him as you were going to testify for yourself, and deny that this took place? A. I was, at first.

Q. And you didn't tell anybody, did you---I withdraw that. Did you tell---did you see your lawyer about pleading guilty in this case? A. Did I see my lawyer about pleading guilty?

Q. Did you consult with him at all about it? A. I did not.

Q. You did not? A. No, sir.

CASE #1915

172

Q Now long a time was it between the time that you told your lawyer you were going to testify and deny that this took place, and the time when you told the District Attorney that you would come in and plead guilty; how long a time elapsed between those two periods? A I seen my lawyer, that night.

Q How long have you been in prison now? A I have been in prison since November of '44, I have been down here.

Q And have been visiting you there? A Yes, mother.

Q Now, outside of your mother? A Nobody else.

Q Police officers? A No.

Q District Attorney? A No, sir.

Q You are sure that nobody tried to give you any money in connection with this case? A No.

Q You didn't send for your lawyer and tell him that you intended to plead guilty, did you? A I told my lawyer I wanted to see him, at first---at least, I told my mother I wanted to see him.

MR. KOENIG: And that's sending for him.

MR. POSNER: Do you think so?

MR. KOENIG: Certainly.

MR. POSNER: Well, when you get ready to argue the case, you are interrupt, but not now.

THE COURT: Gentlemen, do not go outside of what is the proper decorum of a Court Room. The jury will give no weight

CASE #1915

whatever to remarks of counsel.

Q. NOW?

A. You sent word to your lawyer that you were going to plead guilty; is that it? A. Yes, sir.

Q. Do you know what assault in the second degree is?

A. I don't.

Q. So what have you pled guilty? Do you know what the crime is to which you have pled guilty? A. Assault in the

second.

Q. And you are charged in the second? A. Yes, I pled guilty.

Q. Do you know now to what you pleaded guilty, to what crime you pleaded guilty? Do you know what assault in the second degree is? A. Maltreatment.

Q. Do you know what assault in the second degree is? A. No, I don't.

Q. At that time of the night, did you have any idea in the hallway, except in the elevator? A. No.

Q. Isn't it just in the elevator? A. Yes, in the halls.

Q. I am speaking of the lower floor? A. Yes, that is.

Q. Were there lights all over in those rooms and elsewhere? A. All over.

Q. Including that room? A. Including the room.

INVESTIGATION

1791

CASE #1915

Q Tell, when you were going on September 30, were you going mostly into what place was dark, were you? A I was not.

Q Didn't you say that you would testify that that place was dark, and that nothing did take place there? A I didn't say anything about the place being dark, but I did say that I would testify that nothing happened.

Q Did you actually commit the act with this woman? A No.

Q And you were finished and through with it when the officers came in? A No.

Q You were not finished? A No.

Q Didn't you say that it was your intention to telephone to these girls at 125th Street and that you started, and didn't get a chance to finish it?

MR. KOENIG: I object to that, unless he states the time, place and the person to whom he is alleged to have said it.

THE COURT: Allowed.

A I did not. I didn't mention anything about telephoning.

BY MR. POSNER:

Q Have you been convicted of any other crimes? A I have not.

Q Did you have any part of your body exposed? A No, sir.

26
Q Did you hear the police officers come up the stairs into the hallway? A I did not.

Q In coming up the stairs into the hallway, they had to pass a window by the side of which you were? A Yes.

Q Now, let us know how many minutes it was that you stood outside in the street before you walked in? What do you say on that point? A About two minutes before he walked in.

Q And about five minutes inside? A Yes, sir. I was in there about five minutes before the officer came in.

MR. POSTER: That is all.

RE-DIRECT EXAMINATION BY MR. KOENIG:

Q When you were first asked by the police officers whether or not---what you were doing, did you tell them the truth? A Not at first. I didn't say anything.

Q Well, when you did speak respecting the crime you committed, did you tell them the truth? A Not at first.

Q You knew you were under arrest?

Q And at that time did you know that you were charged with a crime? A Yes, sir.

Q And you believed it to be serious? A Yes, sir.

Q And you were lying to save yourself; weren't you?

A Yes, sir.

Q And, the next morning, when you came into the Police

CASE #1915

24
Court, did you tell the truth? A "I told the truth, that
same night."

Q To whom did you tell it? A To one of the officers;
I don't know which one it was; the one who was standing with
me.

Q On the way to the station house? A Yes, sir.

Q And you told him what had taken place? A Yes, sir.

Q And the next morning, before the clerk, did you
have been told what you were charged with, and you said "guil-
ty"? A Yes, sir, "I started, but I didn't get a chance."

Q And did you also say, before saying that, "I am guilt-
ty", to the clerk?

MR. POSNER: I object to that.

THE COURT: Sustained.

MR. ROSENBERG KOENIG: I am merely trying to show that
he made statements, similar to the ones he made here, at
that time.

MR. POSNER: And I object to that as being not
proper.

THE COURT: Sustained.

BY MR. KOENIG:

Q Did you say, "I started to, but I didn't finish"? A
Yes, sir.

RE-CROSS EXAMINATION BY MR. POSNER:

Q And did you not explain that by saying that you had

CASE #1915

35
gone to the 'phone and started to 'phone to this girl in
135th Street, but couldn't finish because the officers came
in? I didn't say anything about phoning.

Q (Question repeated) A No, I didn't make no state-
ment about what I meant. I said, "I started to, but didn't
get a chance."

Q And didn't you tell your lawyer that you are a politi-
cian also? A No, sir; I didn't tell anybody that.

BY MR. KOENIG:

Q What was your attorney's name in the Police Court? A
In the Police Court I didn't have any attorney.

MR. KOENIG: That's all.

MR. POSNER: No further questions.

JAMES J. BISHOP, of the 40th Precinct,
witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. KOENIG:

Q Bishop, now, will you please speak up loud and clear,
sir.

Q The gentlemen of the jury desire to hear you. Carry
your voice to the last man. You are a police officer of
the Municipal Police Force of this City? A I am.

Q And what precinct are you attached? A 40th Pre-
cinct.

Q And on the third day of May of this year, you were so

CASE #1915

171

attached to that precinct? A Yes, sir.

Q And you are a member of the uniformed police force?

A Yes, sir.

Q And on the third day of May, at about the early morning of that day, where was your post? A I was on stationary post on 144th Street and Amsterdam Avenue.

Q When you use the term "stationary post", I suppose you mean, in common parlance, a fixed post? A Yes, sir.

Q When was that? A At 3:55 A.M.

Q And what is the address of that? A Amsterdam Avenue and 144th Street.

Q And do you know where 340 West 144th Street is? A Yes, sir.

Q And on what side of the street is it? A On the south side, between Amsterdam Avenue and Broadway.

Q Now, at that time in the morning of that day, will you state whether or not you saw Harry Jackson, or the colored boy that you now know to be Harry Jackson? A Yes, sir, and also Harry Singer.

Q The defendant? A Yes, sir.

Q Had you known Harry Jackson before that day? A No, sir.

Q And at that time and place, when you saw Harry Jackson, did you also see Harry Singer? A Yes, sir.

Q This defendant? A Yes, sir; I saw them both.

CASE #1915

Q Where did you see them? A In front of the premises
at 530 West 144th Street.

MR. KOENIG: Now, for the purposes of the record, what
is conceded to be in the City and County of New York.

MR. POSNER: Yes.

BY MR. KOENIG:

Q Where were they doing? Describe to me what was
the action there, and what was the result.
A Well, they were standing in front of the
premises, each other in front of the premises,
530 West 144th Street, at 2:50 A. M. May 16, 1934.
I fixed my watch at the time, but Officer Gordon
believe me, and I asked Officer Gordon what the time was,
and he said it was five minutes to three.

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

THE COURT: Strike it out.

BY MR. KOENIG:

Q Did you have a talk with him? A Yes, sir.

Q Don't tell what he said, but at the time you spoke to
him, where were Singer and Jackson? A In front of the
premises 530 West 144th Street.

Q How long a time elapsed between your seeing Singer
and Jackson and the coming up of your side partner, as you
call him? A He came up at 2:55 A. M. and I sent him to--

CASE #1915

MR. KOENIG: I object.

THE COURT: Sustained.

BY MR. KOENIG:

Q Now, here is my question, officer. You saw these two men, Singer and Jackson, in front of the house that you have named, sir.

Q And after that did you see Conden? A About fifteen minutes.

Q And at the time, at the time of seeing Conden, where were Singer and Jackson, do you know? A In front of 510 West 144th Street.

Q You spoke to Conden, did you? A Yes, sir.

Q And what did you do after speaking to him? A Well, I told Officer Conden---

THE COURT: No, you must not tell what you said. We want your acts, what you did.

A (Answer continued) I left fixed post and went to the northwest corner of 144th Street, and Officer Conden went to 510 West 144th Street.

BY MR. KOENIG:

Q And where did you go in those premises? A I stood there for fifteen minutes, watching these two defendants, Harry Jackson, and Harry Singer.

BY THE COURT:

Q Were they on the sidewalk? A Yes, sir.

CASE #1915

Q And what occurred then? Will you state whether or not you saw Jackson do anything? A Well, I seen him going into the form of having intercourse with the mouth.

Q Well, what else did he do, if anything, with refer-
ence to getting you? A Well, after we watched them for
about a minute, Harry Singer looked up---Harry Jackson,
---he looked up, and seen Officer Gordon and I stood
---feet from where he was seated.

... in uniform? ...

And, as soon as Harry took
off his shoes, why he immediately walked
walked over to--

Q What did Singer do? A Singer, at the same time, pulled his penis from the mouth of Harry Jackson, and, at the same time, looking at Officer Gordon and I, and grabbed him by his right hand, and placed his penis back into his mouth, at the same time turning his back to us. I immediately placed the two defendants under arrest. I asked Officer Singer if he didn't live in the premises and he said no. I asked him his name and apartment number, and he said that was none of my business.

So I asked Harry Jackson did he live in the premises, and he said he worked there about three months. I asked him where he lived, and he said 48-51 West 135th Street. I immediately placed him under arrest and, as I was going---

CASE #1915

Q Wait a minute. Did you go to an apartment with Jackson? A I did not.

Q. Or Singer? A. I did not.

Q. Did you know whether Gordon was involved with the
 right out with me.

Q And, when you got out on the sidewalk, did you
have a conversation with anyone?
A No.

Q. What did he say to you and what did you say to him?
A. Well, Singer asked me if I had any money.
I asked him, "What do you mean by having it?" and
he said, "I have a little money in my pocket," and I handed
over the amount.

Q Pardon me. What was that? A He said he had a little money in his pockets to fix the car up, but didn't state no amount.

Q. What did you say? A. And I said, "You can't sue me at all, because I don't take that kind of money."

Q And was there any further conversation? A Yes, sir; on the way up Amsterdam Avenue to the station house, on several occasions he tried to stop me again, and, when we reached 181st Street and Amsterdam Avenue he wanted to take us into the side street, and fix it up. He said, "There's no use of going any further with this case. Let it drop right here." And I said, "You come to the station house and tell

[illegible]

CASE #1915

that to the lieutenant."

Q Did you ask him his name? A I asked him his name.

Q Where? A In the little anteroom off the elevator apartment---in the apartment, at 530 West 144th street.

Q And what name did he give? A The name of Larry Finger.

Q And do you know his name now? A I cannot recall.

Q Did you have conversation you had recalled, and were any further conversation between you and Finger? A I say, yes, I think I did with Conden.

Q Now, I object to that. I think you failed to recall that conversation.

MR. KOLNIG:

Q And either you or Conden had any conversation with Finger? A If Conden had it, I was taking it in from in front of the door and hearing? A Yes, sir.

Q What was further said? A When he saw I refused to talk to him about fixing the car, I heard him say to him, "Well, street and apartment house, 'Couldn't I fix you with a little money?' And Officer Conden refused to talk with him.

Q Was there any further talk? A No, sir. As far as I remember, no, sir.

MR. KOLNIG: You may examine.

CROSS EXAMINATION BY MR. POMER:

Q 350 West 144th Street is also the middle of the block; is it not? A About 300 feet west of Amsterdam Avenue.

Q That is an extremely long block there, is it not, between Amsterdam Avenue---and what is the other end of Broadway.

Q And Broadway? A Yes, sir.

Q Now, that the center of the block is---approximately---see about three hundred feet from what is the center of the block, is it not the center.

Q And there are lamp posts in front of 350 West 144th Street, is there not.

Q Now, did, I think you said, there are, yes.

Q Are there two? A One.

Q And is it by the light of this lamp post that you could see a distance of 300 feet, in the dark of the night? A It is.

Q Did you see Schiff as he was going along the street first? A Not.

Q Did you see him walking along the street to me he and the negro began their filthy embraces embrace? A I did not.

Q Didn't you see him staggering along, and pass the negro first and then walk back? A I didn't even see him stagger.

CASE #1915

34
Q You didn't even see him walk up to that time? A I didn't even see him walk up to that time.

Q And, three minutes before Officer Conden came, you saw these two men standing together in an embrace? A Yes, sir.

Q And Officer Conden came, and he saw them, sir.

Q And then Officer Conden went over to them, didn't he? A Yes, sir.

Q What did he do? A Well, sir, he went over to them.

Q And he was looking to do what? A Well, sir, I don't know, but he was looking to see what kind of motions they were committing.

Q So that the officer walked over to them, and he saw them there when they were standing? A Yes, within the houses.

Q And the embrace still continued? A Yes, sir.

Q And when you came up from where you were, twenty-five feet from the main Avenue? A I was about twenty-five feet from the main post.

Q Well, didn't you leave that post, twenty-five feet from the main post, and come over to Officer Conden?

Q And until the fifteen minutes had passed.

Q And you say you have quite an accurate sense of time and distance, is that right? A Yes.

Q And when you say fifteen minutes, you mean fifteen minutes? You don't mean a minute or two, or anything like

CASE #1915

that? A No, sir; I mean fifteen minutes.

Q In fact, this embrace might have lasted twenty minutes, might it not? A No, sir; it didn't.

Q Well, did Officer Condon go tip-toe-ing up to 510?

A No, sir; he walked slowly.

Q Did he hide himself in the shadows? A No, sir; he didn't hide himself. He walked right up near the building line.

Q Well, wouldn't those men, unless they were away, you know, if they could see you, they could see you? A There wouldn't be any reason why they couldn't. I was in the middle of the street.

Q Well, is there any reason why they couldn't have seen Condon, two doors away? A He was standing behind a post.

Q Well, did he hide himself behind a post? A After he got on, he stood behind a post of the apartment house.

Q Wasn't it pretty dark, wasn't it, at that time, at that hour? A Yes, sir; but the lights were burning.

Q Well, had you been watching any particular house for any reason? A I had been watching several houses there.

Q Had you occasion to watch this now well-known house? A No, sir; not before this occasion.

Q Of course, you were watching these two defendants,

CASE #1915

and you had been watching them embrace for fifteen minutes?

Yes.

You don't mean a mere handshake, do you, an embrace?

No, no handshake. Lacing their arms around the neck and

and when they walked inside. On three differ-

ent occasions, I am going to get to each of these occasions, so we won't misunderstand each other. Now, how long did they stay inside? They went in, and came back out, the first time, and stood by the lamp post, leaning against the pillars there, like with an iron fence attached to it.

And then began to embrace again. And then they went in again.

Now many minutes were they inside, on the second occasion, before they went out again? I should say about five minutes.

About five minutes? A Yes, sir.

They went back on the second occasion, inside, and now, when they were gone, this time, they were gone about a couple of minutes.

Q About two minutes, you say, is that right?

Q And then they came out again? A Yes, sir.

Q And did they go again to this lamp post? A They

CASE #1915

stood in front of this railing again.

Q Well, the first time they stood at the lamp post, they stood at the railing, facing the lamp post. It's only five feet away from the lamp post.

Q And it was perfectly bright where they were standing, is it, like a street lamp.

Q And, in fact, were they standing at this place during the fifteen minutes of embracing that you refer to? Yes, they were.

Q Now, during those fifteen minutes, did they come back and forth there five minutes, embracing, and then they would go inside and come out again and stand at the same place, exactly the same place, five feet away.

Q No, I don't mean to tie you down to particular points. When they continued to embrace? Well, they had a little conversation, suppose, between the times.

Q Were they embracing, too? A No, not all the time.

Q And between times they would stop and talk and then embrace again? A Yes, twice they done that.

Q Now, you know the occasion to which I am referring. We have got it clear that they stood for fifteen minutes embracing, within four or five feet of the street lamp, and then went inside, and were gone a short time and came back and continued their embraces for five minutes more, and then

1810

CASE #1915

38
I understand you to say that they had gone inside, and re-
turned three different times? A Yes, sir.

Q Now, after that five minutes embrace, did they en-
ter, and then you testified that they were gone about
ten minutes? A That's about right.

Q And they stand outside again?
A Well, they stand outside until ten
minutes before they entered again.

Q Now, after talking for ten minutes,
they entered again? A Now, I am speaking of the
first time. A The second time?

Q Well, I guess a few minutes.

Q Give me your idea of how long they were
inside the second time? A About three minutes.

Q And they would embrace and talk and then embrace
and talk during those three minutes, is that about right?
A Yes, that's about right.

Q That's about right? A Yes, sir.

Q And then they went inside again; is that correct?

A The second time?

Q Yes, I am speaking now of the third time--no, of the
second time. How long were they gone inside the second time?

A The second time about three minutes.

Q And then they came back; is that? A They came
right outside again.

CASE #1915

Q And how long did they stay inside to begin with? A About three minutes. And they went in again.

Q That is the second three minutes, and they stood there by that light? A No; the first time about two minutes, and the second time about three minutes and the third time about three minutes.

Q Now, is there if I have you right, correct. First they came, a tracing, by this light, for several minutes, and went inside and returned, and then about two minutes later, sir.

Q And then they embraced for a couple of minutes, and then again? A Well, about a couple of minutes. I don't know of them. It is just my judgment as to the exact time.

Q Well, I want your idea of the time? A Well, a couple of minutes between each time. It was five minutes before they went in, and about three minutes, each occasion coming out.

Q Well, you said about three minutes, and is that about a fair statement? A Yes, sir.

Q And then she went inside again and stayed about how long before they came out for the third and last time? A I don't think they were in there a minute.

Q You don't think they were in there a minute? A Yes sir.

CASE #1915

Q And they stood out there, this third time, for how long? A A couple of minutes, and went in again.

Q And during that time they stood there in one long embrace? A Well, they wasn't embracing each other all the time, you know.

Q And so that during those two or three minutes, which was the last time that they came out before they went in and you followed them, they would embrace and talk and talk and embrace? A Well, you know this is an archway that leads right off the street.

Q I understand. I know the place. That is your statement of what took place, is it not? A Yes, sir.

Q Then they went in again? A They went in then, at ten minutes past the hour.

Q And then you followed them in immediately? A I did not.

BY THE COURT:

Q How long did this matter take? It is your judgment that you are giving? A Yes, sir.

Q You didn't time any of these matters? A No, sir; I didn't time any of them.

Q And how long did it take? A From 2:55 to 3:10 A.M.

Q And you have told the jury what you saw done during that time? A Yes, sir.

CASE #1915

Q Starting time you fixed by looking at your watch, did you? A Yes, sir.

Q And when you proceeded with your brother officer to enter the house you took note of the time? A Yes, sir.

Q And you are giving your opinion as to the time that elapsed as to these various occasions that they went in and out and stood there? A Yes, sir.

BY MR. POSNER:

Q Now, do you understand the value of a pocket watch timer?

Q And, as we have said, you are a soldier, do you have an accurate idea of time? A Yes, according to my judgment.

Q And you think you have a pretty good idea of time, a pretty accurate idea of time? A Well, I don't know, but what I just think elapsed between each time they went in and out.

Q And the last time they went in, did you tell them to come out? A Yes, sir.

Q And they didn't come out? A No, sir.

Q Where were you standing then? A I was standing at the northwest corner of 14th Street and Amsterdam Street.

Q Still about three hundred feet away? A Yes, sir.

Q And Officer Condon was standing behind a post two bars away? A Yes, sir.

Q During the time that these men went in and out and

CASE #1915

embraced? A Yes, sir; at five minutes of three Officer Conden came up.

Q I asked you if he stood there during that whole interval? A Yes, sir.

Q Now, when they didn't come out, how did you do? A Waited for about three minutes.

Q Did he go down? A Down a little, yes.

Q After they didn't come out in three minutes, did you go over to 510, which Officer Conden was, and went together to 530, and looked into the hallway leading out to Court Yard of the case, and went to the door also, looking from the Court Yard into the hallway, and looked on the stairway where the elevator booth was and didn't see nobody there, looked in the elevator, which was open, and didn't see nobody there; turned to the right, and Officer Conden was with me at all times, and walked about sixteen feet, west, in the hallway, and turned to the right, and there is a five and a half foot entrance, leading into this anteroom, or waiting room, for the elevator to come down, and then I seen Harry Singer and Harry Jackson, the two defendants, in the anteroom.

Q Yes, there was a light in the elevator, was there not? A There were.

Q It was the only light there, wasn't it? A It were not. There was a light in the hallway also.

CASE #1915

Q Light anywhere else? A Two lights in the ante-
room.

Q Lightly lit up, was it? A Oh, no, lighted up, and
in there was the red globe.

Q And how long did you stand there, at the door of
the reception room? A I looked at the two merchants for
about a minute.

Q How long did you stand there for about a minute? A Yes, sir.

Q And then you went in? A No, sir; he walked along
it, and then he came back and there, and it was the same.
Q And then he came back with some; isn't that so, sir?

Q And you saw them first in the room, then, when they
walked in, right of the room, were they there? A Yes, you
go in, yes.

Q And the window you pass by as you go up the corner? A
Yes, sir; but it is a stained glass window, I should judge.

Q Was it open, wasn't it? A No, sir.

Q And you remember that it was closed? A Yes, I remember, I
looked at it, and it was closed.

Q Now, whether or not any person could have
any access to the room in having you or anybody else coming
along that way, who got by that window?

MR. KOSKOFF: Object to that, if your Honor please.

THE COURT: Overruled.

CASE #1915

Q What is that question?

BY MR. FORNER:

Q Do you know whether any one would have any difficulty who might sit by that window, in hearing people coming along the street outside? A Well, we didn't make no noise going in.

Q Now, since you say you didn't go in on tiptoe, you only walked along slowly, how are you able to hear what noise you made or didn't make? A Well, in fact, I didn't hear nothing.

BY MR. FORNER:

Q You tried to go in quietly, did you? A Yes, sir.

BY MR. FORNER:

Q Well, I asked you just now if you went in quick, and you said you went in slowly? A I went in slowly, I said.

Q Now, this reception room is opposite the elevator, isn't it? A It's about eight or ten feet west of the elevator, of the entrance to the elevator.

Q Is this a fair description of the place, the name (pointing to diagram)? A That's about right.

BY MR. FORNER: I offer it in evidence.

BY MR. FORNER:

Q Accurate? A Don't know anything about it, unless you say it's accurate, I will have no objection. Q Are the distances, etc., accurate? A I did-

CASE #1915

the measurements and distances.

Q Well, the locations? A Well, where is the elevator and the anteroom is about there. (Indicating).

Q Okay. I am quite certain it is accurate, your Honor.

A Yes, Your Honor. When I will take it for the purpose of clarifying the testimony.

Q No objection.

(13 is marked Defendant's Exhibit 1).

Q Now, sir:

A Yes, sir. You show a line indicating how you entered the place. A This is the entrance. (Indicating).

Q And this? A This is the way I walked (marking on the diagram).

Q Now, this reception room is about opposite the elevator, is it used by persons who wait for the elevator to come down? A It isn't quite opposite.

Q When the elevator door open? A It was open.

Q You have marked with lead pencil about the corner you and the other officer took; is that right? A But we looked under the stairway.

Q Did you look in that corner? A Yes, I looked.

Q And the lead pencil marking indicates the course that you gentlemen took when you went in there? A Yes, when we went in there.

CASE #1915

BY MR. POSNER:

Q When you entered the room, who spoke first?
spoke first.

Q "What did you say?" I said, "after a minute was up,
any---I asked him---"

Q "What are you doing here?" I said, "What are you
doing here?"

Q The negro boy said, "Nothing", and then he made
a negative statement of ignorance.

Q That is, he said, "We were not doing anything"? A
Yes, sir.

Q Yes, and after you said, "What are you doing here?"
the negro boy said "We are not doing anything." I said, he
didn't answer me at first.

Q Well, a minute or two later he answered you, didn't
he? A After I stood him up.

Q After you stood him up? A Yes.

Q Did you call him outside? A I heard him right in
that room until---

Q Didn't you step out? A Yes, I stepped out to look
at his tongue.

MR. POSNER: I object to that and I move to strike that
out, as irresponsible to my question.

THE COURT: Strike it out.

BY MR. POSNER:

CASE #1915

1819

Q Did you look at his tongue? A Yes, sir.

Q And you saw what he was doing, didn't you? A Yes, sir.

Q And you were sure of what he was doing, weren't you? A Yes, sir.

Q Then what did you look at his tongue for? A To see if I could see any marks on his tongue.

Q And you saw what he was doing? A Yes.

Q And you knew that he was going to the Academy, didn't you? A Yes.

Q And there was evidence of it right there under your eyes? A Yes, sir.

Q And it was perfectly bright there. A Yes.

Q And why didn't you look at his tongue in the room, instead of the hallway? A Well, he walked out with me.

Q Well, didn't you call him out to look at his tongue? A Yes.

Q Why did you do that? A I had him under arrest at the time.

Q And you had him under arrest in the room, didn't you? A Yes.

Q And when you saw the light, wouldn't you call him out to look at him? A Because I was taking him out of the room. I had put him under arrest and---

CASE #1915

1820

Q But what has that to do with taking him out into the hallway to look at his tongue?

MR. KOENIG: I object.

THE COURT: Sustained.

MR. POSEY: Exception.

MR. POSEY:

Q Will you explain why, if it was light enough to look at his tongue in the room itself, you found it necessary to call him out into the hallway for the purpose of looking at his tongue? --, the door was right in front of the entrance leading into the room.

Q Well, then, do you want to change your statement that the room was perfectly lighted? A No, I don't.

Q Now then, will you tell us why, if that room was perfectly lighted, and you had seen the act itself and proved to you and satisfied you that sodomy had been committed, was it necessary for you to look at the boy's tongue?

A Well, to get enough proof and everything. I wanted to get everything that comes with the case.

Q Had you any doubt of what you saw in the room? I had no doubt at all.

Q You had seen his penis exposed, hadn't you? A Yes, I had.

Q And you had seen the rest of his body in the boy's mouth? A I had.

CASE #1915

Q And you had seen the boy get up, after you had stood there for a minute? A I did.

Q And you had seen Mr. Schiff, with his right hand, as you testified, put his hand back into his clothing? A Yes, sir.

Q And you had seen him turn up his clothing? A I had seen him turn up his clothing to see him turn up his clothing.

Q And you had seen him turn up his clothing? A Yes, sir.

Q And you were satisfied that sooner or later he was guilty? A Yes, sir.

Q Every act satisfied you that the crime had been committed? A Yes, sir.

Q And then you found it necessary to go out into the hall to look at his tongue to see what you could see; did you find it necessary to do that? A Yes, sir.

Q Did you find that necessary? A Why, certainly.

Q And you stood there talking to the boy about three minutes; didn't you? A About a minute.

Q And during that time the boy was denying he was committing any crime? A He denied it.

Q You accused him of having gone down on Schiff? A I did.

Q And he denied it? A Yes, sir.

CASE #1915

1822

Q and Mr. Schiff denied it? A Well, Mr. Schiff turned around and said---I asked him why he put his hands in the mouth of the defendant---

Q I am asking you one question. Did Mr. Schiff deny it? He didn't deny it. He made a statement.

Q I am going to ask you a question in a moment. You didn't make a statement at that time, did you? A I didn't make a statement, no, I left it out.

Q When you were interviewed by the District Attorney, you said that you were in the room at that time, didn't you? A Yes, sir.

Q You forgot that part? A Yes, sir.

Q You mean the statement you want to make now, that you forgot to narrate when you answered the District Attorney? A Yes, sir.

Q Well, we will come to that statement in just a moment. The negro boy denied that he was doing anything; did not deny it in the building; yes.

Q What is that? A Denied it in the premises, yes.

Q Although you had caught him red handed in the act?

A Caught him red handed, yes.

Q Well, then, did Mr. Schiff jump up, after you had talked for a few minutes with the boy in the hallway, and deny also that such a thing had taken place? A Well, I asked him why---

CASE #1915

Q Did he deny it? A Well, he didn't exactly deny

MR. KOENIG: I object to the form of the question as calling for a conclusion.

MR. POSNER: Very well. I will ask for the exact language in a moment.

BY MR. POSNER:

Q You turned to Mr. Schiff, when the negro boy denied the act and you asked him what he was doing there? A Yes, I asked him what he was doing there.

Q And he told you, didn't he, that he had been passing by after spending the evening downtown, drinking, when the negro boy spoke to him? A He never made that statement to me at all.

Q He had been drinking? You didn't doubt that? A He may have been drinking.

Q Well, you saw signs of it, didn't you? A Well, he had been drinking, but he wasn't intoxicated.

Q Well, that's all right. But you saw the signs of drink upon him? A I could smell it on his breath.

Q There was no doubt in your mind that he had been drinking? A He had a few drinks.

Q Could you tell, do you think, by the smell, how many drinks he had had, when you say a few? A I could not.

CASE #1915

Q He impressed you as a man who had been drinking?

THE COURT: Well, he says he smelt his breath and knew that it was the odor of liquor.

BY THE COURT:

Q Did you? A Yes, sir.

Q And was he drunk or sober? A He could walk as well as I could, your Honor.

Q And did he talk like a drunken or sober man? A Like a sober man.

BY MR. POSNER:

Q Did he tell you that he had passed by when the negro spoke to him? A He never told me that he had passed by.

Q Didn't he tell you that what he was doing in the place was that the negro said that he could get a girl for him? A He never made that statement to me at all.

Q Did you ever hear anybody make that statement whether he could get a girl?

Q That the reason why Mr. Schiff was in the place was because the negro boy had told him he could get a girl for him? A He never mentioned that to me.

Q Did you ever hear of that before in this case? No, sir; I didn't, not in this case.

Q Well, you are not getting this case confused with any other, are you? A No, sir.

Q So that until this minute you never knew that any-

CASE #1915

body claimed that Mr. Schiff was there, because the negro boy said that he could get a girl for Schiff? A I never heard that before.

Q Do you remember in the police court, the next morning, that the negro boy told you that? A That he told me he could get a girl there?

Q That the reason Schiff was there, that night, was that the colored boy said that he could get a girl for him? A No, sir.

Q Did the negro boy say, in the police court, the next morning, that he had tried to get a girl for Mr. Schiff in the house, but couldn't, and was trying to get one from 135th Street? A No, sir; he never said that in my presence anywhere, and I never heard that before.

Q Didn't he tell you that he was about starting to do that, but couldn't finish, because the officers came in? A He did. He made that statement.

Q In other words, he was trying to get this girl, but couldn't get her, because the officers came in at that time is that the statement? A The only statement he made to me was that he was just about to start it, but didn't finish it.

Q But I am asking you about this matter, as to girls? A He didn't mention no girl to me at all.

Q Didn't he say that he was starting to get a girl from 135th Street, because he couldn't get one in the build-

1826

CASE #1915

ing, but couldn't finish it, because the officers came in? 54

A He never mentioned anything about a girl to me in the whole case.

Q On the way to the station house, this man tried to bribe you? (Indicating the defendant) Yes, sir.

And he repeated his efforts to bribe you? Yes, sir.

Q And he tried to bribe your partner? Yes, sir.

Q And he repeated his efforts to bribe your partner? Yes, sir.

Q Did you comply in a manner in which you got him the police station? He stated that he tried to bribe us, but we didn't make the charge of bribery against him; only charged him with this.

Q Did you make the statement to the lieutenant of the desk that he had attempted to bribe you? Yes, sir. I am sure I did.

Q Who is the officer that you told that? I think it was Lieutenant Tighe.

Q And you told him that, on the way to the station house, this man had tried to bribe you? Yes, sir.

Q And what did Lieutenant Tighe say?

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

THE COURT: What difference does it make?

CASE #1915

MR. POSNER: Oh, it is on the question of the veracity of this witness, and I think it is a highly important thing. A police officer, sworn to do his duty, was attempted to be bribed, and made no complaint of it.

COURT: Sustained.

MR. POSNER: Recross.

MR. POSNER:

Q Is Officer Tamm in there to-day? A I don't know. I was through at twelve o'clock last night.

Q What is his first name? A I don't know.

Q Where is the station house that you are talking about? A 152nd Street and Amsterdam Avenue.

Q Did you file any complaint of bribery against him? A I did not.

Q Did your colleague also tell lieutenant Tamm that an attempt at bribery had been made? A I think I did; I am not sure.

Q Do you know whether he did or not? A I couldn't swear to that part.

Q Have you any objection on the point?

MR. KOENIG: Yes, I think it is important. I object. It is inadmissible evidence of the conduct of the witness.

COURT: Oh, all right. The objection is sustained.

MR. POSNER: All right. I have no more to say.

182

CASE #1915

the witness himself is equally admissible on this particular point.

Q Do you know what an attempt to bribe a police officer is a crime?

MR. KOENIG: Yes.

THE COURT: Objection sustained.

BY MR. KOENIG:

Q How long have you been a policeman? A One year and six months.

THE COURT: Objection sustained.

MR. POSNER: Excuse me.

BY MR. POSNER:

Q In the Police Court, the negro pleaded guilty, didn't he? A In the complaint room.

Q What is that? In the complaint room.

Q He pleaded guilty, I mean. A He pleaded guilty in the complaint room.

Q I am asking a question. He pleaded guilty, didn't he, in the police court, not the complaint room; did he plead not guilty? A I will get all your questions in, officer. A Well, he made the statement---

BY THE COURT:

Q Well, did you hear what was said before the Magistrate?

A Before the Magistrate?

Q Yes. Did the subject of the plea come up before

CASE #1915

1829

the Magistrate. A They asked him if he wished counsel.

Q Well, did the Magistrate ask him whether he pleaded guilty or not guilty? A Well, I guess he pleaded guilty, and was sent for downtown.

Q Now, I am appealing to your memory. Did any such thing happen, within your recollection? A Well, he must have pleaded not guilty, but the defendant was made on the affidavit---

Q Now, I don't want any more of it, or any more of it.

Q I don't want to hear it, but I don't want to hear it.

Q I don't want to hear it.

Q Well, then, what do you say to and then what will happen of it? A I don't want to hear it, your Honor.

MR. POSNER: That is all.

RE-DIRECT EXAMINATION BY MR. KOENIG:

Q Now, tell us about that archway, Officer. What sort of an archway is that? A It is about twelve feet high and about sixteen feet deep, and it goes into the court yard.

Q That is, it starts sixteen feet on the sidewalk at itself? A From the sidewalk and building line into the Court yard.

Q That is, there is a place that you call an archway between the building line and the beginning of the Court Yard? A Yes, sir.

Q And where were these men standing with reference to

CASE #1915

the archway? A A couple of feet in the archway.

58

Q Under the archway? A Yes, sir.

Q And when you say that they walked into the courtyard, you mean that you lost sight of them? A Yes, sir.

Q And counsel has referred to embracing right in the light. When you saw any embracing and the light right near them? A About four or five feet away.

Q From the beginning of the archway? A From the beginning of the railing.

Q Now how far were they from the railing when they were embracing? A From the railing itself, in the archway. A From where I first seen them walking at the rail?

Q Yes. And you used the expression "embracing for fifteen minutes", do you understand that it was a continuous period of embracing? A No, sir.

Q You mean that, for fifteen minutes, they embraced, and then talked and then talked and embraced?

MR. POSNER: I object, your honor.

THE COURT: Sustain the objection.

BY MR. KOENIG:

Q Now, what did they do?

THE COURT: I think he has already told us about that.

BY MR. KOENIG:

Q What did you mean? A I meant by going in and

CASE #1915

183

ing out, and standing there a little while, and placing
their hands about the body and neck, and going in the arch-
way again and coming out again, and holding a conversation,
I should judge, and perhaps talking to each other, like
each other.

Counsel has asked you if it is necessary
to look at this colored photograph. Will you answer that
question now, whether or not you saw I looked at his
picture, yes.

Why did you look at his picture?

MR. POSNER: Objection.

THE COURT: I think you have already told us that he
wanted as much evidence as he could get. Counsel for the
defendant asked him to look at it, and he said that he saw
all these things, but that he could not get everything that he
could, he made this statement.

MR. KOENIG: I have asked that question.

THE COURT: Yes, it is pretty clear now, at
least, I suppose it is satisfactory.

RE-CROSS EXAMINATION BY MR. POSNER:

Q On the way to the house, when the two men
talked about money, did you find out how much
he had in his clothes? A I did not mention anything
about money.

Didn't he tell you that he had only a couple of

CASE #1915

dollars? A No, sir.

60

Q Didn't you, on your way to the station house, leave him for a moment, and go to an officer in front of you, who had the negro in charge, and talk to him? A No, sir; I didn't.

Q Did you, while you were on your way to the station house, at any point, leave him alone, and walk towards the street with the other officers, and talk with you, and leave the negro on his own at the station house?

A He had the keys, and I didn't go. No, I didn't. I didn't have the keys. He had the keys. Herma... Officer Condon.

Q Didn't the other officer talk to you on that point, as to his having a couple of dollars? A He didn't talk with me on money at all.

Q Didn't you both agree that he didn't have enough, and wasn't he told by you or your colleague that that wasn't enough? A No, I didn't care to take any money, or say anything about money more than I had said, to anybody.

Q And didn't you say that he would have to go better than a couple of dollars? A I never mentioned such a thing in my life.

Q Did you suggest the amount of money he could fix you with? A He never mentioned how much money he had in his possession,, or how much money he wanted to fix us with.

CASE #1915

Q Did he ask you --- did you ask him for money? A No, sir.

Q He just volunteered it to you both? A -- Jimmy said he had a little money.

Q And how many times did he come to the station house and try to bribe you, Officer? A -- Four times each.

Q Several times? A -- Yes, several times. Q KOENIG: Just a moment, Officer. Did he give you an address when he was there?

Q Where did he say he lived? A -- He said 530 West 11th Street.

Q I understood you said that he said first he lived in 530? A Yes, sir. He said 530, at first. BY MR. POSNER:

Q And, the next morning he told you his correct name was Schiff, didn't he? A Yes, sir.

Q And he told you that the address he gave was next door, where a relative of his lived? A Yes, sir; a relative named Singer.

Q And he told you also that his correct address was a door or two below that? A 500, on the corner.

MR. POSNER: That is all, Officer.

MR. KOENIG: That is all, Officer.

J O S E P H G O N D E N , of the 40th Precinct, a witness

CASE #1915

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

DIRECT EXAMINATION BY MR. KOENIG:

Q Now, Officer, please speak up loud. We want to hear you. You are an officer, a police officer attached to what precinct? A 40th.

Q And on the third day of May of last year, at about 2:45 P. M., were you on duty? A Not last year, last year.

Q Yes, last month.

Q And where was your post? A 141st to 145th Street, Amsterdam Avenue.

Q And at that time and on that date did you see Officer Bishop? A Yes, sir.

Q And where did you see him? A On the fixed post at 144th Street and Amsterdam Avenue.

Q And did you see the man whom you now know to be Harry Jackson, at that time? A Yes, sir.

Q And did you see the defendant? A Yes, sir.

Q And at the time you first saw Jackson and this defendant, where were you? A On 144th Street and Amsterdam Avenue.

Q Who, if anybody, was with you? A Officer Bishop.

Q And where was this defendant Singer and Jackson, at the time you were with Bishop? A In front of the premises

CASE #1915

530 West 144th Street.

Q And where were they with reference to the premises?

A Up against the railing, about fifteen or twenty feet east of the premises.

Q What, if anything, were they doing? A Well, the defendant Singer was placing his arms about the defendant Jackson.

Q Where? Placing them how? A On his person, that's all.

BY THE COURT:

Q What part of his body? A From his penis up and around his penis and around his legs.

Q Could you see that? A Yes, sir.

Q Right at his middle did you see his hands? A Yes, sir.

Q And going further up to his shoulders? A Yes, sir.

Q And around his neck? A Yes, sir.

THE COURT: Go ahead.

BY MR. KOENIG:

Q And how long a time did you observe the defendants Singer and Jackson? A From about 2:55 until about 3:10 A. M.

BY THE COURT:

Q Well, who was doing the moving of the hands? Jackson or the defendant? A The defendant Singer.

CASE #1915

Q The defendant at the Bar? A Yes, sir.

Q He was doing the moving of the hands? A Yes, sir.

BY MR. KOENIG:

Q Now, tell us just what both Jackson and Singer did, tell us the details, not your conclusions, the things that you observed, and the things that you did, or Officer Rinnapp did, up to the time that you got into the building itself. A Why, when I first noticed the defendants, I walked to the premises 510 and stood behind the pillar, watching them. I was about a hundred and fifty feet away from the two defendants at that time. There was a lamp post in front of the building, which was lighted, and I could see in the light shining on the two defendants their positions. After watching them---

Q Well, what were they doing? Tell us? A The defendant Singer was placing his arms about the body and neck of the defendant Jackson. Jackson also retaliated.

BY THE COURT:

Q What do you mean by retaliated? A Put his arms around him too.

BY MR. KOENIG:

Q Now, proceed. A After watching them about fifteen minutes, the two defendants entered the premises, Officer Bishop and I followed closely behind.

When we got into the premises, we walked down the apart-

1837
CASE #1915

ment corridor, and to the right was a sitting room. He found the two defendants in this sitting room.

The defendant Jackson was sitting in a chair with the defendant Singer standing up facing him, with his penis out and in the defendant Jackson's mouth.

After watching them for about a minute, the defendant Jackson suddenly looked up and observed Bishop and I and he pulled away his penis and the defendant Singer turned around and he saw Officer Bishop and I and he immediately turned his back to us and placed his penis in his pants.

Q Now, during the fifteen minutes that you observed them, did they enter the building? A Yes, they made several attempts to enter the building, or at least they went out of my sight. There is a court there.

Q And how many times did that occur? A Three times.

Q And the last time that, in your view, as you put it, to go into the building, how long a time elapsed before you and Bishop went in? A I would say from three to five minutes.

Q And when you entered the building, what, if anything, did you do? A Why, we looked in to the Court---there is an open Court at the entrance to the building---, and we looked there to see if we could see the two defendants there. We didn't see them.

MR. POSNER: I object to what they didn't see, and move

CASE #1915

to strike it out.

THE COURT: Yes. Strike it out.

BY MR. KOENIG:

Q Now, tell us what you did? A We went into the building, and into the apartment hallway and looked up and down the apartment hallway and didn't see them.

And we looked in the elevator and didn't see them and we walked about five or six feet from the elevator to a sitting room on the right, and we found the two defendants, as I have already described, in that sitting room.

Q Now, after putting the two defendants under arrest, will you state whether or not you had a conversation with the defendant Singer? A Yes, I asked the defendant Singer if he lived in the building.

BY THE COURT:

Q That is, the defendant at the bar? A Yes, sir; and he said yes, and I asked him what floor he lived on and he said "None of your business."

And I asked him what his name was and he said, "None of your business", and I said, "Well, if we can't get it here, I can get it at the station room."

BY MR. KOENIG:

Q And was there any further conversation in the building at that time with the defendant? A Yes.

Bishop asked Jackson what he was doing and the police

CASE #1915

Singer in his mouth, and he also asked him, "Why did you put your penis in Jackson's mouth?" And he claimed, "You know when a man gets passionate, he is liable to do anything."

Q Who said that? A The defendant Singer.

Q And where was that? A In the sitting room of the apartment house.

Q And was there any further talk? A No, not in the premises.

Q And, as you were going to the apartment house, after you had left the building, was there any conversation between you and the defendant Singer? A Yes, sir.

Q What was that conversation? A Singer says to me, he says, "Don't arrest me. And that poor boy, he is only a poor working boy, and don't arrest him. He'll lose his job." And I said, "You are not thinking of yourself, are you?" And he said, "Yes".

So I said, "Well, I am going to lock you up. I can't let you go."

And he said, "Well, I have got a little money here, if you let me go I will give it to you," and I said, "I'm not doing anything doing."

And that took place in the Court.

Q In the where? A In the court of the building, on the outside of the building. When the defendant Singer saw

CASE #1915

that he couldn't do anything with me, he went over to Officer Bishop and asked Officer Bishop would he pulloff, would he let him go. In fact, all the way to the station house he asked Officer Bishop to let him go. As we got to 151st Street and Amsterdam Avenue---

Q Speak up, please. A As we got to 151st Street and Amsterdam Avenue the defendant Singer said, "Let's go down the side street here and we can fix this case without going inside," And I said, "No, there's nothing doing. We are going to the station house."

MR. KOENIG: You may examine.

CROSS EXAMINATION BY MR. POSNER:

Q You and officer Bishop discussed this case very thoroughly together, before you came to Court? A No, sir.

Q You didn't discuss it with him at all? A No, sir.

Q Each of you saw what took place? A No, sir.

Q And, therefore, there was no necessity of discussing it further? A No, sir.

Q You will swear that you and he, since this arrest took place, didn't discuss the case? A Certainly.

BY THE COURT:

Q Are you in the same station house? A Yes, sir. We are in the same house.

Q And see each other frequently? A Yes, sir.

Q And didn't you talk on this subject at all? A Not

CASE #1915

on the direct evidence in the case.

Q Hadn't you talked generally about what you saw there?

A No, sir.

Q Never? A No, sir.

BY MR. POSNER:

Q Do you know that the testimony of Officer Bishop is almost precisely word for word the testimony that you have given?

MR. KOSKIE: I object to that.

THE COURT: He may answer it, in view of the answer that he has given.

A I don't know, sir.

BY MR. POSNER:

Q Now, you were standing behind a post at 210? A No, 510.

Q And this occurrence you saw on the street, your observation of it lasted fifteen minutes? A Yes, sir.

Q And do you know that Officer Bishop says it was exactly fifteen minutes in duration? A No, I don't.

Q And do you know that, when he entered the room, stood at the door leading into the hall, he stood there about a minute? A No, sir.

Q And you have testified that you stood there for about a minute? A Yes, sir.

Q What hand did this defendant use when he put his

CASE #1915

organs back? It was his right hand; wasn't it? A Yes.

Q And do you know that the occurrences of that room have been described precisely by Officer Bishop the same as you did? A Well, why shouldn't they? He witnessed it, the same as I did.

Q And do you know that the officer spoke of his having turned away from you, and put his organs into his pockets? A I don't know that.

Q Did you know that the officer had said, "Officer Bishop, that the defendant tried to bribe him several times and tried to bribe you several times? A Well, he knows that, because he was there.

Q Did you know that he had testified to that here? A No.

Q Did you know that he testified that, when you got to 151st Street, he again made the effort to bribe you, both and asked you into a cricking room or saloon? A No.

Q Did you know that he had testified to your having looked about in the court yard, and the next place, until finally you came to the right and entered this doorway? A No.

Q And do you know what he testified to what was served in that room in almost verbatim language you used? A No.

Q Now, when you got there, who spoke first among the

CASE #1915

officers? Officer Bishop.

Q And he said, "What are you doing here?" A Yes, sir.

Q And the negro boy said, "We are not doing anything" didn't he? Yes.

Q Didn't he hesitate for a moment? A Who? The negro? Yes.

Q Yes. In other words, you had to wait a minute or so before he brought that out. So hesitation, didn't he? A Yes, sir.

Q Now, do you know that Officer Bishop speaks of that hesitation before the negro answered?

MR. KOENIG: I object.

THE COURT: In view of his answer to me that he, in the same house, never spoke to his brother officer, I will allow a very wide scope.

MR. KOENIG: They didn't speak as to the direct evidence, he said.

THE COURT: He may answer.

BY MR. POSNER:

Q And then the negro said, "I'm not doing anything"?

A No, sir.

Q And do you mean to say that the defendant then turned around and said, "I did commit the crime?" A No, sir.

Q Well, didn't he try to excuse himself for having done it? A No, he only---

CASE #1915

Q Didn't you just say that he said, "You know a man will do anything when he is in a passion?" A Yes.

Q And didn't you regard that as excusing himself for having committed this crime? A No, not necessarily.

Q And do you know what he could have referred to, except that he tried to justify the act with this negro boy, on the ground of his passion? A I suppose so.

Q Well then, why did you say that he was not trying to excuse his crime? A Well, I didn't accept it that way, first.

Q Did you say it that way because of my questions to you? A No.

Q Now, what is it, that you didn't consider it an excuse for his crime, or that it was not? A I didn't think so, at first.

Q Now, which is it? A I said that he just said that he got passionate. I didn't accept that from him as an excuse.

Q Didn't you regard that as an admission from him that he had committed the crime? A Yes.

Q And didn't you consider that, at the same moment, that the boy was denying it, that he was admitting it? A Yes, sir.

Q And didn't I ask you a moment ago if you didn't understand that the negro boy denied it, while the defendant

CASE #1915

admitted it, isn't that so? A Yes.

Q And then a few minutes ago, you did say that the negro boy denied it, while the accused admitted it? A Yes, sir.

Q Then you change your testimony; do you? A Well, I wouldn't call that an admission that he committed the crime. He denied it then.

Q So when I asked you, a moment ago, whether he denied it, and you said certainly, you understood me to be talking about that room? A Yes.

Q So that is all you are saying that the crime had taken place? A Yes, sir.

Q And, in the second breath he said, "You know what a fellow will do, when he is up against passion?" A Yes, sir.

Q And the negro boy stood there, denying it? A Yes, he denied it.

Q Was that room perfectly light? A Too lights in the room.

Q And there is no question about its being perfectly light, and you seeing what took place there? A There was enough light there for me to see what took place.

Q There were two lights there? A Yes, sir.

Q And it was a small room? A Yes, sir.

Q And it was certainly ~~bright~~ bright enough for you

CASE #1915

to see what you have testified to? A Yes, sir.

Q Was there a light in the elevator door? A Yes, sir.

Q And was there a light in the hallway? A Yes, sir.

Q And how long were you in that place altogether? A I should say ten minutes.

Q Did you take notes of where the lights were at the time you entered the place? A I did not.

Q Is there any reason why you can remember now precisely where the lights were and howmany there were, that night? A I don't think I could.

Q Is there any reason that you can give for the other officer testifying to these lights, and observing them at that time?

MR. KOENIG: Objected to.

THE COURT: Overruled.

A I don't know.

BY MR. POSNER:

Q Did you think that we might put here the question whether it was light enough to see what you have sworn to?

A You might have.

Q You thought, did you, at that time, that some day somebody might raise a doubt as to whether it was light enough to see what occurred, did you? A Yes.

Q And, therefore, you took notice of the lights? A Yes.

CASE #1915

Q Now, a moment ago, you said there was no reason why you should take notice, and now you say that there was. A Well, you spoke about the lights in the room. There is lights all over the building.

Q Have I asked you about any places in that building but the hallway and the room? A You asked me about the elevator.

Q And isn't that part of the hallway? A Yes.

Q Have I asked you about any lights, except at that place; did I ask you about any other part of the building?

A No, sir.

Q Do you remember the negro boy stepping out of the room, alongside of the entrance to an apartment, or the doorway of an apartment? A No, sir.

BY THE COURT:

Q Speak out loud. How long have you been on the force?

A About two years and a half.

Q Well, you have been a police officer long enough to speak out loud. The jurors complain that they can't hear you.

BY MR. POSNER:

Q Now, you are quite certain of that, Mr. Witness? A Only when we took him out of the building and put him under arrest, and were taking him out.

Q What parts of the bodies of these men were exposed,

CASE #1915

at the time you entered the room, and stood at the entrance watching them? A Why, the defendant Jackson's penis was out of his pants.

Q Jackson, you mean? A Yes, sir.

Q The other defendant? A Yes, sir. Also the defendant Singer's penis was out.

Q Did you look at both of them? A Why, certainly.

Q That part of your testimony---well I'll withdraw that. Well, what did this negro do when he saw you, after your minute's observation at the door? A Well, he held his head down and dropped the penis of the defendant, and tried to hide his penis in his pants.

Q And this man, the defendant, turned around with his back to you and put his organ back in his clothing? A Yes, sir.

Q Now, what else did the negro say in that room except, "We are not doing anything here, or in the hallway, or until you left the building? A I don't know of nothing.

Q Did either of you touch the negro? A I didn't touch him.

Q Did either of you? A Officer Bishop may have placed his hand on him when he arrested him.

Q Beyond that? A Beyond that, no.

CASE #1915

EXHIBIT 1

100

Q Did you ask him to show any of his organs? A No, sir.

Q Are you sure? A Positively sure.

Q Didn't you ask him to show any part of his body to both of you? A No, sir.

Q What part of his body was shown to you, except his organs, did you see? A Yes, his penis. A Yes, sir.

Q Didn't you ask him to show some part of his body, besides his penis? A No, sir.

Q Now, a minute ago, when I asked you if he asked to show any part of his body to you, and you said no, did he ask me did I ask him.

Q No, what distinction you had in your mind? Didn't you understand that I asked you the question, did either of you ask him to show it? A No, I didn't understand it that way.

Q Did he ask you that way? A No, sir.

Q Well, who asked him to expose a part of his body? A Bishop.

Q What part of his body did he ask him to expose? A His tongue.

Q In that room? A In the hallway, as he stepped out of the room.

Q Now, I thought you said that you didn't leave the hallway, except as they were on their way out of the build-

CASE #1915

ing---that he didn't leave the hallway--- did you say that? 78

A. It wasn't out of the hallway.

Q. I thought you said they didn't step out of that room until they were placed under arrest, and were on their way to the station house. Was he placed under arrest at that time.

A. Yes, you are right. He did stop and talk to him in the hallway. But that was only practically. He didn't go, like we walked right out.

Q. Now you remember that it was after that you walked back and forth to this defendant here? A. No, sir.

Q. Well, now, you agree with Officer---No, I will not agree with that question. Do you remember when I asked you, a while ago, whether the boy had been called out into the hallway at all, near the entrance to any apartment there, that you said no. That wasn't to the entrance of any apartment. It was near any doorway.

Q. So your idea is that he was called out to the hallway and made to show his tongue, but it wasn't near an apartment. Yes.

Q. What is the distinction you make? A. Yes, sir.

Q. We've got it clear. After the negro had denied that anything wrong had taken place, you or the other officer

CASE #1915

79
turned to the defendant, or the accused, and said, "What are you doing here?" A Officer Bishop did.

Q Officer Bishop, did? A Yes, sir.

Q Now, please understand, when I ask you questions, and you answer me, did a particular thing, or saw what took place, or did a witness did or said something, will you please, just answer effect, because I am not asking you to make a statement, or to speak, or to say, if the thing took place. Now, did you see me? Well, who asked him what he was doing, then, Officer Bishop? A Officer Bishop.

Q And you said, sir, that he had just come from downtown, and he had been drinking, and that, in passing by, the Negro boy had spoken to him and asked him if he wanted a woman? Now, to my recollection.

Q The Court then admonished the jury in accordance with Section 11 of the Code of Criminal Procedure, and took a recess (until 12 o'clock).

---ccccc---

CASE #1915

AFTER RECESS.

J O S E P H G O N D E N his cross examination being continued, testified as follows:

GROSS EXAMINATION (Continued) BY MR. PODNER:

Q You mean you don't recall one way or the other whether he did or did not say that? A No, sir.

Q You don't recall that one way or the other? A No, sir.

Q Well, now, you said that the negro was going to get a man for him in the house? A No, sir.

Q You don't remember that, one way or the other? A No, sir.

Q When you don't remember a thing, one way or the other do you mean to say, "I can't deny it and I can't affirm it"? A Yes.

Q Well, now, you understand that I am asking that question with reference to this particular room, at the time in question, don't you? A Yes.

Q Well, do you remember that the negro, in addition to denying that anything had taken place, also said that that was the fact, that he had asked this man in because he thought he could get him a woman? A No, sir.

Q Do you remember whether the negro said that or did not? A I didn't hear the negro say anything.

CASE #1915

Q Well, what is your statement about that? A I don't know.

Q In other words, you won't deny nor affirm it? A No, sir.

Q And you were there all of this time in that room? A Yes, sir.

Q Now, I am going to ask you to state their motives in being in this place, is that right? A Yes, sir.

Q Now, did you see a crime? A No, sir.

Q They committed the crime? A Yes.

Q You asked them if they were there? A No, I didn't ask them that.

Q They were asked by you or your colleague what they were doing there? A Yes.

Q And you can't tell us whether they did or did not say, in explanation, that the negro boy had asked him to come in because he thought he could get him a woman? A No, sir.

Q Now, the circumstances of that particular arrest fresh and clear in your mind? A Yes, sir.

Q It didn't take place more than six weeks ago, did it? A No, sir.

Q Can you account for the fact that you remember every thing that was there, that occurred, and are able to recite the times and hours, but you can't recollect that particular

CASE #1915

point? A Well, I didn't hear him say that. I paid more attention to what they were doing than what they said.

Q But you do remember, however, that both of them denied that this took place? A Yes, sir.

Q What about the other two?

Q That is, you say that they denied it? A Yes, I said, "What I saw was looking at you for a minute, and I saw you committing the crime."

Q And, although you thought they had indeed and stood there for a minute, and saw everything that was taking place, they both denied that this had occurred? A Yes, they denied it.

Q Now, don't you remember, when you got to the door and said, "What are you doing here," that the negro said, "Nothing", and that then you or your colleague called the negro out of the room into the hallway, for a moment? A Yes, that's right.

Q I thought you said, before recess, that he never was called out of the hallway until you were on your way out of the house? A I said that he was called out by Officer Bishop when he asked to look at his tongue. That was the only time that he was called out of the room.

Q Did he show his tongue? A Yes, sir.

Q And did you see anything the matter with his tongue?

A No, sir.

CASE #1915

Q In that room was perfectly light, as you say, will you tell me why it was necessary to call the boy out into the hall to have him show his tongue? Why, that was done by Officer Bishop's authority. I had nothing to do with that.

Q I see. You can't give any reason for it, but it is up to Officer Bishop to give his reason for it. Why, certainly.

Q It certainly was not because the boy was in the right place, was it?

A No, sir.

A Yes, sir.

BY MR. ROBERT:

Q When did this man begin to try to bribe you---I mean Herman Penfield? A When we were going out into the court, that is, we were in the court of these premises, ready to go into the street.

Q Before I ask you that, did you both tiptoe through that courtyard to get in there? A No, sir; I wouldn't say we tiptoed.

Q You walked just as you would in any other place?

A Yes, through the court.

Q And into the hallway? A No, when we reached the hallway we tiptoed in.

Q Oh, you did tiptoe in the hallway? A Yes.

CASE #1915

Q In the hallway? A Yes, sir.

Q Now, this boy was somewhat under the influence of liquor, wasn't he? (Indicating the defendant) A Not to my knowledge he wasn't.

Q Had he been drinking at all? A He had drink in him, but he wasn't intoxicated in any way. He had been drinking.

Q And you think that the question of whether he was or wasn't intoxicated would have any effect upon the verdict as to his guilt or innocence? A I do not.

Q For that reason, under the law, this defendant must voluntarily submit himself to such an act, before he can be found guilty, don't you?

MR. KOENIG: Objected to.

THE COURT: Objection sustained.

MR. POSNER: Exception.

BY MR. POSNER:

Q Do you understand that you are charging him with having voluntarily submitted to this act?

MR. KOENIG: I object to that.

THE COURT: Objection sustained.

MR. POSNER: Exception.

BY MR. POSNER:

Q You say he had some drink in him? A Yes, he had

CASE #1915

liquor in him.

Q At first, he talked with a rather thick speech when he did speak to you, didn't he? A No, sir.

Q Didn't it take him a few moments, as he sat there, hearing you and the other officer and the negro talk, before he seemed to realize what this whole thing was about? A I don't think he did.

Q It did take several minutes of your talk with your colleague and the negro before he spoke? A No, sir.

Q Did he speak immediately? A He spoke immediately when Officer Bishop asked him why he put his penis in Jackson's mouth, and he said he didn't have it there.

Q Did he explain that he lived just down the street? A Not at that time. At the time he was taken to the station house he gave an address of 540 West 144th Street.

Q How many times on the way to the station house did this defendant attempt to bribe you? A Oh, practically all the way to the station house.

Q How many times on the way to the station house did he attempt to bribe your colleague, Mr. Bishop? A All the time, in fact.

Q And then, when you got to 151st Street and Amsterdam Avenue, he tried to have you step into a saloon, or in a place, in an effort to still attempt to bribe you? A I won't say he mentioned a saloon, but he invited us to go

CASE #1915

down into the side street and dispose of the case there.

Q Now, on your way to the station house, after you had had the talk in which you say he attempted to bribe you, didn't you walk ahead and speak to Officer Bishop? A No, sir.

Q And did you at any time leave him and walk up to Officer Bishop, who had the negro in charge? A No, sir.

Q Was any amount mentioned on the way to the station house? A No, sir.

Q Do you remember that on the way to the station house he protested his innocence? A I don't recollect that.

Q Would you say that he didn't? A Well, I won't say that he did or didn't.

Q Can't you remember such a thing as that? A No, sir; not when I didn't hear it. I didn't hear him say anything like that, protesting his innocence.

Q And, following that, he asked you to let him go, didn't he? A Yes, with the consideration that he offered us money; that was his idea, that he could bribe us to get away.

Q Now, did you ask him how much it was worth? A No, sir.

Q Did he ask you how much it was worth? A No, sir.

Q Did he say that he had only a few dollars in his pocket? A Yes.

Q Did he say that also to the other officer? A I don't recollect that.

CASE #1915

Q. Now you remember--do you know that Officer Bishop testified that nothing was said whatever about his having some dollars in his pocket?

MR. KOFFIG: I object to that, because he is testifying to what was said to him, and not what was said to Bishop.

THE COURT: You may answer it.

BY MR. KOFFIG:

Q. Now you remember now that he had only a few dollars in his pocket?

A. Yes, sir.

Q. And when he attempted to bribe you, you didn't knock him down for attempting to bribe an officer? A. No, sir; I only said he couldn't bribe me at all. I told him he couldn't talk to me on that subject whatsoever.

Q. And, having said that, you meant that? A. I certainly did.

Q. And he could see that you meant it? A. I don't know whether he could or not.

Q. There is no doubt about your having meant it? A. I certainly did.

Q. And so, having meant it, you continued to ask you to accept a bribe, all the way to the station house? A. Yes, sir.

Q. And your colleague also? A. Yes.

CASE #1915

Q Do you know that it is a crime to bribe a police officer? A Yes, sir.

Q Don't you regard it as almost as serious a crime as sedition, of which you accuse the defendant?

MR. KOSNIG: Objected to.

THE COURT: Sustained.

I go.

THE COURT: You did not answer when the question was sustained.

BY MR. POSNER:

Q Did you make a charge of attempted bribery against this man?

MR. KOSNIG: Objected to.

A I wasn't the arresting officer in this case.

MR. KOSNIG: Don't answer, officer. When I object to a question, don't answer until the Court rules.

BY MR. POSNER:

Q Whether or not you were the arresting officer, you were an officer in the case? A Yes, sir.

Q And you were the man that accompanied him? A Yes, sir.

Q And had physical charge of him on the way to the station-house? A Yes, sir.

Q And you were the man who could have allowed him to go away, if you chose to do it? A Well, I don't think I

CASE #1915

could.

Q You could have allowed him to escape, if you chose, couldn't you? A No, sir.

Q Why not? A Because I didn't feel disposed to.

Q But you could have done so, if you had felt disposed to, is that right? A Yes, I suppose so, if I wanted to relinquish my position in the Department, I might have let him go, certainly.

that's

Q For the reason why you didn't charge him with bribery, let say? Is that your reason? Although you had charge of him on the way to the station house, and the way to the station house. A It was explained to the lieutenant on Desk Duty about him trying to bribe us.

Q You explained that also. A Yes, sir.

Q To Officer Tighe? A To Lieutenant Tighe.

Q Well, we'll have him here a little while, if he's on duty to-day. By the way, do you know whether he is on duty to-day or not? A That's something I couldn't say.

Q Now, in the Police Court, do you remember the negro saying that the reason Herman Schell was in the house was because he, the negro, had asked him to come in, in order to see his girl? A No, sir; I don't.

Q You say that that wasn't said to you? A Yes.

Q So you know that the negro has testified this morning that he did say to the officer or officers, as well as

CASE #1915

to his lawyer, that that was now Schiff came to be there? 30

MR. KOENIG: I object to that.

THE COURT: Overruled.

BY THE COURT:

Q Do you know anything about it? A He didn't state it to me.

Q Do you know anything about his testifying to that effect? A No, sir.

Q Have you heard anything else that he testified to here, to-day? A No, sir.

Q You don't hear of it, sir.

Q While he was testifying? A No, sir.

Q And nobody has spoken to you about it? A No, sir.

Q About his testimony? A No, sir.

BY MR. POSNER:

Q Do you remember that he said that to you? A I do not.

Q Now, I inform you that the negro said that he said this to one of the officers, and I inform you, further, that Officer Bishop says that it wasn't told to him, and I ask you now, in view of that, whether you recall whether or not it was said to you? A I am telling you that the negro never told me anything like that. I had no conversation with the negro in Court.

Q Or at any other time, on that point? A No, sir; not

CASE #1915

in Court or no other time.

Q Not in Court, and at no other time whatever? A No, sir.

Q The fact of the matter is, is it not, that the actions of the defendant on that occasion made you think that he was drunk, that night? A No, sir.

Q Isn't it a fact that the reason you followed him inside was because you thought the negro was going to try to rob him? A Yes, sir.

Q You did? A Yes, sir.

Q The negro isn't much bigger than you, is he? A Well, you saw the negro and you saw me, and that yourself; didn't you?

Q Well, there was nothing about him or his appearance that night that would make you doubt that he could take care of himself, was there? A Why, he could take care of himself, that night.

Q Perfectly sober? A Yes.

Q And yet, although for fifteen minutes you saw them embracing each other and going in and coming out three times? A Yes.

Q You felt that, when finally he went in, he was in danger of being robbed, and you would have to go to his assistance? A Yes, sir.

Q That was your feeling? A Yes, sir.

CASE #1915

Q And yet you thought he could take thoroughly good care of himself, that night? A Yes, sir.

Q Now, one final question. You have looked up the record of this negro, haven't you? A Yes, sir.

Q You know that he has a record, don't you?

MR. KOSMIG: Objected to.

THE COURT: Allowed.

THE COURT: Direct.

MR. POSNER:

Q Don't you know that he was committed to the state of Illinois, and is now out on parole?

MR. KOSMIG: I object to that, if your honor please.

That is not the way to prove a record.

THE COURT: Objection sustained.

MR. POSNER:

Q The negro has testified that he has never had any contact with the police in any way. Has he ever had any contact with you? A It's the first time I ever met the defendant.

Q During the recess hour, did you discuss this case with your colleague, Mr. Bishop? A No, sir.

Q Did he tell you that, this morning, he testified as to the bribery; that he thinks, perhaps, he told Lieutenant Tighe about it? A No, sir.

Q Did he tell you that, after further questioning---

CASE #1915

BY THE COURT:

Q Did you have any further talk with him about the case?
A No, sir. He made a special point not to utter a word about this case.

THE COURT: Now, that disposes of that matter, counselor.

BY MR. KOENIG:

Q Now, you say---when a man is arrested, doesn't he usually slip into the record of the man arrested? A No, sir; not a correct patrolman. The detectives do that.

Q Did you know anything about his record in the House of Refuge?

MR. KOENIG: Objected to.

THE COURT: Sustained.

BY MR. KOENIG:

Q Do you remember at the station house---at the police court---whether or not the negro said to you, "I was trying to get a woman for him, and couldn't get one in the house, and so I wanted to telephone to 135th Street, and had only just started and couldn't finish, because you had put me."

A Had no conversation with the negro in the police court.

Q Where? A In the police court.

Q Did you have such a conversation with him any where else? A No, sir.

RE-DIRECT EXAMINATION BY MR. KOENIG:

CASE #1915

When you used the words, "I don't remember", what do you mean by that? Do you mean that it wasn't stated to you? A Yes.

MR. POSNER: I object to that, Your Honor, please, as incompetent and improper.

THE COURT: Overruled.

MR. POSNER: Objection.

MR. KOENIG:

And will you state what you said in the statement, in response to counsel's question, "Did Mr. or Mrs. [redacted] have been said?"

MR. POSNER: I object to that. The English language is perfectly clear on that point.

THE COURT: You may answer.

MR. POSNER: Exception.

I meant that it was not said in my presence.

MR. KOENIG: With your Honor's leave, I am calling back the witness Jackson, because counsel for the defendant wants to ask him a few more questions, and, with your Honor's leave, I may put a question to him before he leaves the stand.

THE COURT: Very well.

H A R R Y J A C K S O N, being recalled by the District Attorney, testified as follows:

MR. POSNER: May I proceed to further cross examine him before Mr. Koenig questions him?

CASE #1915

THE COURT: Yes.

CROSS EXAMINATION (Continued) BY MR. POSNER:

Q When were you committed to the House of Refuge? A I forget the time.

BY THE COURT:

Q About what time? A About three years ago.

BY MR. POSNER:

Q And how long did you remain there? A About two months.

Q And you have been out on parole ever since?

Q Do you remember the name of the policeman who arrested you? A I do not. I wasn't arrested by a policeman.

Q By whom were you arrested? A My mother had me put up there.

Q And do you remember the name of the judge who committed you? A I do not.

RE-DIRECT EXAMINATION BY MR. KOENIG:

Q You say you are eighteen years of age now? A Yes, sir.

Q And you were arraigned in the Children's Court; weren't you? A Yes.

Q And it was on the complaint of your mother? A Yes, sir.

Q And so, in response to the counsel's statement--in

CASE #1915

response to counsel's questions--you said you never had any trouble with the police. Do you desire to change that?

Well, I haven't had no trouble with the police.

Q Now, just this question. Were you taken out into the hallway at any time by either of the two officers, prior to leaving the building?

MR. POSNER: I object to that as incompetent and improper, if your Honor please.

THE COURT: I think it is, at this time in the case. You will have an opportunity, because of the width of the inquiry on the part of counsel for the defendant, but not now.

MR. KOENIG: Very well, your Honor.

THE COURT: It may come in by way of rebuttal, and in reply to what has been elicited, but you are now on your own case.

MR. KOENIG: I see, your Honor. If your Honor please, the People rest.

THE COURT: The People rest now?

MR. KOENIG: Yes, sir.

MR. POSNER: The defendant moves, if your Honor please, for the discharge of the prisoner, for a direction for his discharge, on the ground that there has been no proof in conformity with the statute, sufficient to establish a prima facie case on the testimony itself, which establishes such

CASE #1915

97
a contradictory state of affairs as not to permit a fair inference of the guilt of the defendant, sufficient to hold him for trial beyond this point.

THE COURT: Motion denied.

MR. POSNER: Exception.

---oooOooo---

CASE #1915

THE DEFENSE

98

HERMAN H. SCHIFF, the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. POSNER:

Q Herman, how old are you? A I am thirty-one.

Q Were you born here? A I am, or rather, I was.

Q You are not married? A Single.

Q What business have you been in? A In the wine and liquor business, importing.

Q What was your firm name? A Schiff & Gans.

Q What Gans? Jack Gans? A Yes, sir.

Q And, after his death, you continued the business yourself? A Under my own name.

Q And have been in that business how long? A Since 1907.

Q Do you remember the night when you were arrested?

A I do.

Q You must speak up clearly and distinctly, and I want you to tell your own story clearly; so that it may be heard. Where did you spend the night prior to your start for home?

A Why, down on Broadway, where I visited a number of cafes and restaurants.

Q With whom were you accompanied, or by whom? A With my friend, a dentist.

Q What is his name? A Dr. Sennsac.

1915

CASE #1915

Q. He is a chum of yours? A. Yes, sir.

Q. And what time did you reach his home, that night? A. Oh, around half past eight.

Q. And where did you go from there? A. We went down Broadway---it was too late to go to a theatre, and we had anticipated when I called on my friend that we would go to a picture show for a while, and we went to a picture show for a while, and we went to the Knickerbocker Club, the Astor, Claridge, and then we went to the Waldorf-Astoria, where we were until about half past ten.

Q. Did you drink anything at the Knickerbocker? A. I did.

Q. What sort of drink did you have? A. Well, I can't exactly tell what was the first drink I had, that evening.

Q. Well, what did you have in that evening? A. The highballs, Scotch highballs, and beer on going home.

Q. And how long did you spend at the Knickerbocker, that night? A. About half or three quarters of an hour.

Q. And then you went to the Astor? A. Yes, sir.

Q. You and Dr. Sennesac? A. Yes, sir.

Q. And what did you do there? A. We were standing up at the cafe bar and I had a few more drinks.

Q. And from there where did you go? A. Went to the Claridge, at 44th Street, Rector's old place.

Q. And how long did you stay there? A. Until twelve

CASE #1915

o'clock.

Q And did you do any drinking there? A I did.

Q And from there where did you go? A We went to the Garden Restaurant.

Q The Garden Restaurant. Yes, sir.

Q And how long did you stay there? A About half past two.

Q Did you drink at the Garden, too? A Yeah.

Q And what did you do after you got out of there? A Well, I went to the subway, took the 60th Street station.

Q What station? A The 60th Street and Broadway station.

Q Who took you to the station? A The doctor.

Q And what was your condition as to sobriety? Were you drunk or were you sober? A Why, I was drunk to the extent that, while I wasn't ossified---

Q You weren't ossified? A Well, I wouldn't say that. I could navigate, but I was groggy.

Q Would you say that you were drunk? A I would say that I was drunk.

Q What station did you get off at? A 145th Street.
BY THE COURT:

Q You knew what was going on, didn't you? A At what time?

1873

CASE #1915

Q You could appreciate what was going on? A Well, everything was in a haze like to me, at the time.

BY MR. POSNER:

Q You knew what? A I knew everything was like in a haze to me.

Q Do you have a distinct recollection of any place or place from that time when you were arrested?

BY THE COURT:

Q Yes or no? A No.

BY MR. POSNER:

Q Do you remember walking along the street, after you got off the subway, towards your home? A Yes.

Q Did somebody speak to you, as you were on your way to your home? A They did.

THE COURT: Have you developed, counsel, where his home is?

MR. POSNER: Oh, yes, thank you.

BY MR. POSNER:

Q Where is your home? A On 144th Street, number 50.

Q How many doors below the house where this negro was?

A The fourth door east.

Q The fourth door east? A Yes, sir.

Q In other words, you were on your way past him, and that house where he was, to your home, three or four doors below? A Yes, sir.

1874

CASE #1915

Q. And it was about three o'clock in the morning?

A. Yes, sir.

Q. And do you remember his saying something to you as you passed by? A. I do.

Q. Do you remember just what it was? A. Well, in passing by, he bid me the time of night, or the hour, and he asked something, and I turned back and said, "What was that you said?" and then I went back to him and he asked me, "Did I want a woman, and I walked inside with him."

Q. About how long would you say that you stayed outside? A. Well, I think that a couple of minutes, at the most.

Q. Well, then, you walked inside? A. Yes, sir.

Q. And did you go to this reception room?

Q. And do you remember whether the room was lighted or dark, or only partly lighted? A. As far as I can recall, it wasn't lighted up at all.

Q. And how long would you say you stayed there with him before an officer came? A. ~~Difficult~~ At the utmost, around three minutes, I should imagine.

Q. Well, you are giving now your best recollection of those times? A. Yes, absolutely.

Q. Are you able to say positively that those were the times? A. No, sir.

Q. Or that the language that you are using was exactly the language? A. No, only that it was part of the conver-

1879

CASE #1915

sation.

Q Was your recollection a generally hazy one? A Yes, sir.

Q And do you remember what the man said to you in that room? A I recall his asking me how much I would pay.

Q And did you get much beyond that in your conversation with him? A Absolutely nothing.

Q What next did you do? A I went out of the room and next heard some conversation in the hallway, coming from the entrance to the room.

Q Yes? A And in a moment or two after that, I sort of turned around, and I saw a figure, turning around slightly, and when I turned around full I saw two officers in uniform just approaching the room.

Q Just approaching the room? A Yes, sir.

Q How far away would you say they were? A Six to eight feet back of me, I guess.

Q That is your best recollection of it now, is it? A Yes, sir.

Q And what did the officers say? Do you remember? A I don't recall which officer spoke, but one of them wanted to know what we were doing there. He was the short officer, I think.

Q Do you remember that? A I remember that.

Q Now, what then did the officers do, so far as the

1876

CASE #1915

104

negro was concerned? A They beckoned that way out to the hallway, and, in front of---

Q And what did you do in the meantime? A I then sat down, facing them, and first spoke to the boy, and, the first thing, you know, they very loudly accused him of having had intercourse such as it was with me.

Q Well, what did you do that he was accused of? A When I heard that, immediately jumped up. It sort of brought me around a bit, and I soiled it. I said, "No, this isn't true. This boy never did anything like that, any more than anybody else ever did. I am not of that caliber." And they said, "Well, we seen him," which I decided.

Q Yes. Did they ask you what you were doing there? A They asked me what I was doing there.

Q And when you said you began to come in, what effect had this charge upon you? A It sort of sobered me up, because I had never been accused of such an act, and never seen anybody perform such an act on me, and, naturally, knowing the gravity of it, it sobered me up in a minute, recalled me to my wits.

Q Did the officers then ask you what you were doing there? A Yes.

Q And what did you say? A I said that I was downtown and had quite some to drink, and was passing on home when this boy accosted me and wanted to know if I wanted to

CASE #1915

meet a woman.

Q Well, did the officers have some further talk before your arrest was made, or did they then take you into custody?

A They asked where I lived---no, first, what my name was, and then, knowing the queer situation I was in, I gave the name of a relative, and was taken into custody.

BY MR. ROSS:

Q You gave the name of a relative? A Yes, sir.

Q The full name? A Yes, the name of a relative next door.

BY MR. ROSS:

Q Just the family name? A Yes, just the family name.

Q And you say by this time you had been somewhat aroused and sobered by the gravity of the charge against you, sir.

Q And was it after this denial of the charge against you say you gave him the name of a party next door? A Yes, his name.

Q And on the way to the station house did you have any talk with the police officers? A Why, going out of the house onto the street, knowing the position that I was in, and knowing that I was absolutely innocent of an act of this kind, I walked with one of the officers, and I told him, "Now, you have no case against me, although I am only too ready to go along with you, and, in view of this, if a few

CASE #1915

1878

106

dollars can help matters along, I am willing to straighten it out that way", to which he says to me, "How much is it worth?" And I said, "Well, I haven't much, but a few dollars," and he left me standing there and went on to the other officer, and they held a whispered conversation for a moment or two and he said when he came back, "No, you will have to go better than that."

Q Now, did you say on your way out that you asked the officer to let you go? A Absolutely.

Q And was it then that the officer asked you how much it was worth? A Yes, sir.

Q Was that the first time that money was mentioned? A Absolutely.

Q Now, when the officer said to you, "How much is it worth?" in reply to your request would he let you go because of your innocence, what was your exact reply, as you can remember it now? A Well, it would be worth a couple of dollars.

Q That it would be worth a couple of dollars? A Yes, a couple of dollars.

Q Did you think, when he asked you how much it would be worth to let you go, that he wanted to find out how much money you would pay him?

MR. KOENIG: Objected to.

THE COURT: Objection sustained.

CASE #1915

MR. JOSEPH: Exception.

MR. JOSEPH:

Q Now, what was the name of the officer who walked with you? A The shorter of the two, Conden, I think it is.

Q Did you also intercede for the negro boy and say that they should let that boy go? A No, I made no mention of the boy, except that he had accosted me.

Q Did you and the boy protest your innocence at any time? A Absolutely.

Q In the Police Court, the next day, did you protest your innocence? A I protested my innocence in the police station, when I got there.

Q And you pleaded not guilty? A Yes.

MR. KOENIG: I object to this, as a series of self-serving declarations.

THE COURT: Overruled. Anything that you said there you may say.

BY THE COURT:

Q To whom did you say this? A To the Lieutenant at the desk.

Q Did you say anything to these police officers who were here? A Yes, sir.

Q It was in their hearing, was it? A Yes, sir.

Q You have a distinct recollection of that, have you?

A Yes, this was at the Police Station.

CASE #1915

BY MR. POSNER:

Q Now, have you since that occurrence thought back and tried to remember as near as you possibly could everything that took place, that night? A I have.

Q And is it your best recollection that what has been testified to by you is what did take place, as near as you can fix it? A To the best of my recollection, yes.

Q Was that boy's penis exposed? A It was not.

Q Was your penis exposed? A Absolutely not.

Q Did he take your penis in his mouth? A He did not.

Q Did anybody, so long as you have lived, do that to you? A Absolutely not.

Q Did you stand out in the street, hugging and embracing that negro boy? A Most assuredly not.

Q The officers have sworn that you did, for fifteen minutes? A I did not.

Q Did you ever see that negro boy before? A No, sir.

Q Had you ever talked with him before that night, as far as you can remember? A No, sir; I had not.

Q When you got to Amsterdam Avenue, or at any other place, did you volunteer to have the men step into a side street, so that you could fix it with them? A I did not.

Q And did you endeavor to do that, to fix it with them after they asked you how much it was worth?

MR. KOENIG: Objected to.

CASE #1915

MR. POSNER: Question withdrawn. It is a repetition.

BY MR. POSNER:

Q Do you drink occasionally? A I do.

Q You are in the liquor business? A I am.

Q What effect has drink on you?

MR. KOENIG: I object to that.

THE COURT: I think I will sustain the objection.

MR. POSNER: Exception.

BY MR. POSNER:

Q Are you a member of a good many societies and lodges in the City of New York?

MR. KOENIG: Objected to.

A I am.

BY MR. POSNER:

Q Have you ever had any difficulty of any kind with the police, or with anybody else? A Never.

Q Have you ever been arrested in your life before? A Never.

Q Have you ever been convicted of any crime? A Never.

Q Have you ever been charged with any crime? A Never.

Q Have you ever had any business difficulties whatever?

A No, sir.

Q Have you lived at home with your family ever since your childhood? A Always.

Q And contributed to the support of your home?

CASE #1915

MR. KOENIG: Objected to.

THE COURT:

THE COURT:

Are you married?

THE COURT:

Living with your father and mother and brothers? A

Yes, sir.

Do you understand the seriousness of this charge, do you

understand it?

And you understand that you are under oath?

MR. KOENIG: Well, I object. I call it that in case.

THE COURT: Well, he is thirty-one years of age and he

has been in the wholesale liquor business. I think I will

have to sustain the objection, in view of his testimony.

BY MR. POSNER:

Q You have heard the police officers swear to your
guilt, this morning? A Yes.

Q And you have heard this negro from the House of Re-
fuge swear to it, haven't you? A I have.

Q Do you declare to this jury that you are absolutely
innocent of this charge?

MR. KOENIG: I object.

THE COURT: Allowed.

A I do.

THE COURT: Cross examine.

1883

CASE #1915

131
CROSS EXAMINATION BY MR. KOENIG

Q You just told counsel that you declare your innocence. am I to understand that, if the officers did testify as they did, you would admit your guilt? A I don't understand the question.

Q Assuming the officers did happen to be officers and testified, if you are guilty, would you admit your guilt? A I certainly would.

Q You would plead guilty and take the chances of having your family and friends know the acts you committed? A Yes, I would.

Q You wouldn't be willing to enter a denial, under oath, to save yourself? A I certainly would not.

Q You would not commit perjury to save yourself from State Prison, would you? A I would not.

Q You would not tell a lie to save your reputation and your liberty? A I wouldn't tell a lie in this case, absolutely not.

Q You have a high sense of moral conduct, haven't you? A I have.

Q Your sense of ethics is high? A Yes, I think so.

Q And it is so high that, under oath, you would refuse to tell a lie, even though you knew it would assist you or help you? A I would, in this case.

Q And yet you thought it was a moral and decent thing

131
131
131
CASE #1915

112
to do, at three A. M., to have a colored man solicit you to
get a prostitute for you? A Well, under the circumstances
coming home at that hour, and being a white man, when
a boy accosted me that way, I didn't think it was anything
out of the ordinary, under the circumstances.

Q Is your sense of morality and ethics affected when
you drink?

MR. FOSNER: I object to that as improper and irrelevant
to a psychological mental process.

THE COURT: Allowed.

MR. FOSNER: Exception.

A At times.

BY MR. KOENIG:

Q And was it that night? A It was.

Q And was it so dealened that you would resort to a
degenerate practice? A It might have.

Q And so that, if the officers have testified as you
heard, in view of your condition, it was nothing surprising
if you did commit that act? A But I didn't commit that
act.

Q You have told us that, in a state of intoxication or
drunkenness, you might resort to degenerate practices. A
Well, then, I misunderstood your question.

Q Well, I want to be perfectly fair with you? A I
didn't understand your question, then.

CASE #1915

113
Q Well, I'll put it this way to you again. When you drink, is your sense of morality and ethics deadened? Available to be.

Q Have you a different notion of what is morally right when you drink?

MR. POSNER: I object to that as immaterial, irrelevant, incompetent, and calling for a mental process, not a fact in this case.

THE COURT: Overruled.

MR. POSNER: Exception.

may have

MR. KOENIG:

Q And in the condition that you were in, that night, do you believe that your moral senses were deadened? A No, as I recall back, they were deadened then.

Q And were they deadened then to the extent that you would resort to immoral and degenerate practices? A Well, I don't know whether you call that---

MR. POSNER: Well, it depends upon what you call immoral and degenerate. This man is drawing a distinction between sleeping with a woman, and having this act practiced upon him.

MR. KOENIG: I use the word "degenerate" to characterize the act testified to by the officers as degenerate. A Oh, I draw a line at degeneracy.

CASE #1915

BY MR. KOENIG:

Q And so, even though you are in a state of drunkenness with your senses dulled, you draw a distinction between certain kinds of immorality? A Yes.

Q And are we to understand, or do you intend to convey to our minds by your statements, that you were so intoxicated that you could clearly remember the events of that night? A Not clearly, sir.

Q Did you have your penis in the mouth of this boy at that time? A I did not.

Q There is absolutely no doubt about that, is there any indistinct recollection? A Absolutely not.

Q Did you ask that boy to go inside with you and submit to a carnal connection? A Absolutely not, sir.

Q Did you hug the boy? A Of course not.

Q Now, in reference to your answer no, there is nothing that conveys an indistinct recollection? A No, sir.

Q There is nothing indistinct about that? A No, sir.

Q You are absolutely certain you didn't do it? A Yes, sir.

Q And, at the time you were arrested, his penis was not in the mouth of this boy? A It was not, sir.

Q And, prior to going into this place, you didn't offer this boy any money? A Of course not.

Q There is nothing indistinct about that? That is an

CASE #1915

absolutely certain recollection? A Yes, sir.

Q And you told us, did you not, that this boy asked you, told you he could get you a girl? A Yes, sir.

Q There is nothing indistinct about that? A Well, as to the exact language of the conversation, I don't recall.

Q But the substance of the conversation?

Q And you have a distinct and clear recollection that, while you were talking to that boy in that anteroom, you heard footsteps? A I did.

Q And in your state of haziness and state of excitement, you had sufficient intelligence and recollection to hear footsteps; is that correct? A I heard footsteps.

Q You didn't tell the officers; did you get so drunk as to be made passionate by drink? A I did not.

Q Then will you tell this jury, with reference to this case, what your recollection is indistinct about?

MR. POSNER: That is rather a negative sort of proof, I submit, if your Honor please.

THE COURT: He may answer it.

MR. POSNER: An exception, if your Honor please.

THE COURT: The drift of your examination was to develop that, as I understood it, and now the learned counsel for the State has the right to follow it up.

MR. POSNER: I except.

CASE #1915

A Well, when I was riding up in the subway, I sort of dozed off until we got off at Manhattan Street, where the subway gets elevated, and I sort of woke up then, and at 145th Street I went up stairs, going towards where I lived, and I was in a foggy condition, and, as I came along, and as this boy accosted me, I only, as I say, remember indistinctly, vaguely as to the nature of what took place.

MR. POSNER:

Q Now, Mr. Singer, you have told us definitely and unequivocally that you didn't see certain things? A I did, sir.

Q And those things are involved in the commission of this crime; you know that? A Yes, sir.

Q You have affirmatively said that you didn't see certain things? A I do, after I came to, after the accusation.

Q And you have denied statements made by the Police Officers, made here? A Yes, sir.

Q And you have given your side of the conversation? A Yes, sir.

Q Now, I ask you in reference to those particular acts, what was there that was indistinct? A That which I ---well---

Q Well, as a matter of fact, your recollection is mighty clear, isn't it?

MR. POSNER: I submit as to what matters he has testi-

CASE #1915

117
fied to, but as to matters he has not testified to, it might
be any number of things. It seems rather a negative way of
proving something that he doesn't remember.

THE COURT: Objection overruled.

MR. POSNER: Exception.

(The question is repeated by the stenographer).

A Only mighty clear as to this open accusation by the officers that an act of this kind had been performed, and then sort of brought myself about and then I denied it.

BY MR. KOENIG:

Q Now, am I to understand that your recollection was wholly indistinct until the time the officers accused you of an offence? A In a way, yes.

Q And that you were unconscious of what you were doing?

A I wasn't exactly unconscious of it.

Q Did you know what you were doing? A In a very vague way.

Q Did you know you were going home? A Well, I---going home, yes.

Q Did you know the house you lived in? A I knew it was the corner house.

Q And did you intend to go into that house? A Into my own house?

Q Yes? A I did.

Q And upon those subjects, your mind was perfectly clear

CASE #1915

was it? A No. it wouldn't have to be clear---

BY THE COURT:

Q Yes or no? Was it or not? A It was.

BY MR. KOENIG:

Q And you were conscious of what you wanted to do, and knew how you wanted to carry out what you had in your mind, to do the acts necessary? A I knew I was going home.

Q And you were conscious of the fact that negro boy bid you "Good morning"? A Bid me the time of the hour, as it passed.

Q And you were conscious that he mumbled something that caused you to turn around to find out what it was? A Yes, sir.

Q And you were conscious of the fact that he was asking you to meet a woman? A I remember that; yes.

Q And you were conscious of the fact that he went into that anteroom with you and you were conscious of the fact that you heard footsteps and you were conscious of the fact that you saw a policeman? A I turned and saw him.

Q Now, what was there about what took place, that night as you now know it, that you were unconscious of? A Why---

MR. POSNER: I object to that as an improper and negative sort of proof.

THE COURT: Overruled. Answer the question.

MR. POSNER: Exception.

180
CASE #1915

A I don't really know how to answer that question.

BY MR. KOENIG: Well, we'll pass that, then. When you were arrested, did you know the crime you were charged with? A I was told that.

Q Did you know at that time that it was a serious offense? A I did.

Q And you had it in mind, did you not, that your reputation was in danger, and your liberty? A Yes, sir.

Q And you have told us that you were a man of fine instincts and ethics; is that correct? A I believe myself to be.

Q And you would not tell a lie, under oath, to save yourself? A That's right.

Q And then tell this jury why you tried to bribe these police officers to let you go? A Because I wasn't guilty of an act of this kind at all, and, going up to the station, told them that; I said, "You have no charge against me at all although I am not resisting arrest."

Q I know what you said, Mr. Singer, but what I want to get is this, in view of what you have characterized as your mental attitude, why did you try to bribe those police officers, innocent as you were? A Because, owing to conditions at my own home, my father being very, very ill, I didn't want this thing to come to their ears, and wanted to quiet it down, if I possibly could.

CASE #1915

Q But you would not lie under oath to save yourself?

A I wasn't to save myself, in that case.

Q You were innocent? A Absolutely so.

Q Weren't you filled with indignation? A I was.

Q Had the police officers, up to the time you spoke about money made any effort on their part to get money from you? A No.

Q And it wasn't the police officers who made the arrest who made any suggestion of doing anything but their duty, but it came from you, is that correct? A Well, in what way, may I ask?

Q As to letting you go? That came from you, didn't it? A I told them I was innocent, yes.

Q And you had never seen the police officers before? A Not to my recollection.

Q And you were indignant? A Yes, sir; and I told them there was no case against me and no act of the kind had been performed.

Q Did you ask them their motive, then, for arresting you, an innocent man and charging you with an infamous crime knowing that you were innocent? A They said they had seen an act of this kind.

Q No. As far as you know, that arrest was not made on their part to extort any money from you? A I couldn't say that.

CASE #1915

Q The suggestion never came from any of taking any
from you? A No answer.

Q That is correct, is it not?

A POSWAT: He had testified to that.

Q KOFMID: Oh, no, he had never said that. That was all
question.

A KOFMID:

Q Didn't you testify, both before the grand jury and
before the first suggestion of it, that you came
from you? A Yes.

Q And the first suggestion as to a trial came from you?

A Yes.

Q And at any time did the officers---I withdraw that.
And, at the time you spoke, there had been nothing said by
the police officers with reference to letting you go? Is
that statement correct? A That is so.

Q You knew, did you not, that the negro boy was charged
with the same offense that you were? A I didn't know
of any charge, until we got to the police station, that is,
the nature of the charge.

Q At the time you were placed under arrest, having in
mind that statement, that you were subsequently sobered up,
did you know that you were accused of having committed a
crime, and did you have it in your mind and did you know that
the boy was being accused of having participated in that same

CASE #1915

crime with you? A The officers said so.

Q But you knew that was the accusation. The accusation.

Q And, at the time you offered that bribe, or offered a bribe to the police officers, you still had in mind the fact that the negro boy was under arrest, and was in the same predicament as you were? A Yes, sir.

Q You knew, did you not, that, as long as that negro boy was arrested, that he would be a danger to the case against you? A I didn't know, one way or the other.

Q Did you make any attempt on your part to have the police officers let the negro boy go? A I did not.

Q Well, did you have it in your mind what explanation the officers could offer if they let you go and looked up that negro boy? A I wasn't thinking of the negro boy at the time at all. I was thinking of myself.

Q Did you have it in your mind at the time that it would be perfectly safe for the officers to let you go, and arrest the participant in the crime? A I wasn't thinking of that.

Q And, with all your desire to get free, and protect the officers, you state you didn't have that in your mind?

A Not as far as the boy was concerned.

Q Didn't you know that the officers couldn't let you go, without the danger of losing their position? A Well, I hadn't been arrested before and I didn't know the natural

CASE #1915

consequences.

123

Q Well, am I to understand, Mr. Singer---pardon me---
Mr. Schiff, that you are so ignorant of law and the duties
of police officers that you believed they could, with impunity,
allow prisoners to go, after they were charged with arrest?
A I don't believe they could.

Q And then, on your part, it was your belief that they
could cause them to violate their oath and the law, and that
is what you were trying to do, about that old fellow, isn't it?
A So, but, being in the position that I was in, and
knowing of my innocence, I wanted, naturally, to get out.

Q And didn't you know at the time that the old fellow
would have to be protected, so that the fact of letting you
go would not be revealed? A I didn't take those things
into consideration at all.

Q You thought that, with impunity, they could let you
go and still arrest that negro boy? A Yes, sir.

Q You never had any trouble with these officers? A
No, sir.

Q Never saw them before in your life, as far as you
know? A As far as I know.

Q And never had any trouble with this negro boy? A No,
sir.

Q If you were called as a witness, would you have testi-
fied---on behalf of the boy Jackson, would you have testified

CASE #1915

180

to the facts as you now have testified? A Absolutely the truth of the incident.

Q And the boy Jackson was in the Police Court, when you denied your guilt? A Yes, sir.

Q And he was in the police court when you made an explanation, if any? A Yes.

Q And, in the police court, did you give the explanation that you now give here? A To the best of my recollection.

Q And at the time that you gave that explanation, do you know whether or not Jackson heard it? A I believe he did.

Q You believe he did? A Yes, sir.

Q And you have heard Jackson tell his story, that he had this carnal intercourse with you? A Yes, sir.

Q Do you know of any reason why Jackson should admit this act, if he didn't commit it, and with full knowledge of the fact that you would testify that no act was committed? A I do not.

MR. KOENIG: That is all. Oh, just one more question.

BY MR. KOENIG:

Q You gave what name, that night? A Singer.

Q And that isn't your name? A No, sir; it isn't.

Q And what is your right name? A Herman Schiff.

Q Who is Harry Singer? A He is the deceased husband

CASE #1915

of a cousin of my folks, living right next door to this address.

Q With whom did you live at 500 West 144th Street? A
My folks.

Q Did you give the address 540 that night? A I did.

Q Why did you do that? A Because, as I said before,
seeing the awkward position that I was placed in at that
time, when the officers asked me where I lived, I said next
door.

Q So that you were conscious of the officers coming up
to you, and were able to fully understand their object, and
what answers to give? A Yes, but I was very nervous, and
I accused me of being a co-partner in an act of this kind,
and I was fully sobered up.

Q And you gave a false name, fully conscious of the
effect of their questions, and your desire to be released?

A Yes, but I corrected the name, the next morning, and
gave the right name and address.

Q And, although you were in this very state of mind,
and are unable to tell us what you were apprehensive of, as
soon as the accusation was made, you got back your full
recollection and understanding? A Well, why wouldn't I?

MR. KOENIG: That's all.

RE-DIRECT EXAMINATION BY MR. POSNER:

Q Why wouldn't you? A Yes.

Q And did you give this name because your father had

CASE #1915

just gone through a very serious operation. A very, very serious.

Q And that was the reason you gave a wrong name?
Yes.

Q Now, you say that you can't account for what reason the police officers had for arresting you. Have you heard stories of police officers making arrests that were not justified?

MR. KOENIG: Objected to.

THE COURT: Sustained.

MR. POSNER: I submit that the Court is bound by the direct questions of the District Attorney.

THE COURT: Objection sustained. Proceed.

MR. POSNER: Exception.

BY MR. POSNER:

Q Had you heard any stories before that as to police officers making arrests for false reasons, on unjust charges?

MR. KOENIG: Objected to.

THE COURT: Sustained.

MR. POSNER: Exception.

BY MR. POSNER:

Q Did you, in the Police Court, the next day, or at any time, tell the negro that he must stick to a story that you told him? A I did not.

Q And insist upon his innocence? A Absolutely not.

CASE #1915

137
Q And say that you would not let him if he didn't? A Of course not.

Q And that you would give him some money, if he got out, if he would? A No, sir; not if the trial took place.

MR. POSNER: That is all, sir.

MR. KORNBLITH: That is all, sir.

MR. POSNER: Will you call Dr. Sannese?

ask that the character witness be brought in from now, because I will be asked to do so.

THE COURT: Very well.

JOHN B. SANNESAC, of 206 East 14th Street, a witness called on behalf of the defense, testified as follows:

DIRECT EXAMINATION BY MR. POSNER:

Q You are a dentist, Doctor? A Yes, sir.

Q And have been for how long? A Since 1904.

Q Have you known the defendant for a number of years?

A Yes, sir; for about three years.

Q And intimately, during that time? A Yes, sir.

Q Do you remember the night that immediately preceded his arrest? A May 3rd.

Q Where did he meet you, that evening? A At my office, at half past seven---or, rather, half past eight.

Q And where did you go after that? A Well, we walk-

CASE #1915

123
ed down Broadway and stopped at a picture house and stayed there
for an hour; and after that we went to the Knickerbocker Hotel
bar, and had a few drinks there, and from there we went to
the Hotel Astor and from there to the Claridge which contin-
ed about two hours.

Q And then you went where? A To the Garden Restau-
rant, at 50th Street and 7th Avenue.

Q And did this defendant eat anything that evening?
No, sir.

Q What was he doing during that evening?
Rye whiskey and Scotch whiskey highballs.

Q Did he drink at each of these places? A Yes.

Q Did you drink? A No, sir.

Q Not at all? A No, sir.

Q Do you drink? A No, sir; I don't, and never intend
to, in fact.

Q And what was Herman's condition, that evening? A He
was very drunk, to be plain.

Q To be plain? A Yes.

Q And after you left the Garden Restaurant, where did
you go? A I asked him to step into my place, and he re-
fused, and I offered to take him home and he refused, and then
we went to the subway, and he went down into the subway and
that's all I recollect of him or saw of him. It was then
about a quarter past two.

CASE #1915

Q Was he in the habit of drinking to excess? A Yes, some times, but not as bad as that night.

Q Now, you have known him socially? A Yes, sir.

Q And in a business way? A Yes, sir.

Q And do you know others who know him? A Yes, sir.

Q And do you know the reputation he has among his friends and in society? A He is a perfect gentleman, all times.

Q And what is his reputation for honesty and decency and morality? A Very good.

Q Have you ever known him to be guilty of---

MR. KOENIG: Objected to.

THE COURT: Sustained. Cross examine.

CROSS EXAMINATION BY MR. KOENIG:

Q You are a very good friend of his? A Yes, I have seen him socially and professionally.

Q (Question repeated) I merely want the statement as a fact. A Well, naturally, yes.

Q And, if it was up to you to give him aid and assistance, you would give it, wouldn't you? A I am telling the truth, just as it occurred.

Q Well, if he was intoxicated, you would take care of him, wouldn't you, if he was out with you? A If I could, yes.

Q And, before he left you, he was in a state of beastly

1903

CASE #1915

intoxication? A Yes.

Q And you let him go home when he couldn't take care of himself? A Well, he could, as far as walking was concerned.

Q But he didn't have his senses with him, did he? No, I don't think he did.

Q And you had it in your mind that he couldn't get on the subway train, without difficulty? A Oh, yes, naturally he could do that.

Q Well, what was there about him that you were afraid that he couldn't do? A What do you mean?

Q What was there about his condition that caused you to fear that he could not take care of himself? A I didn't fear that he couldn't get home, because I left him at the subway to go home.

Q Well, what was there in his condition that made you inquire whether you could take him home or not? A Because he was intoxicated, naturally.

Q Well, did you have it in your mind that he couldn't take care of himself? A Well, I had it in mind that he had better stay downtown.

Q Or that you had better go home with him? A Yes, sir.

Q Did he answer your questions intelligently? A No, sir.

Q Was he conscious of the fact that he was going to the

1901

CASE #1915

Subway. Well, I couldn't say as to that.

Q Was he conscious of the fact that he was going home?

A Well, I suppose he knew where he was going, because I put him on the subway---on the right way to go home.

Q You put him on the subway, on the right way to go home?
A Yes. As far as I knew, he took the subway to go home, yes.

Q I know that, you have told us that; but I want to know, as far as you know, was he conscious of the fact that he was going home?
A I think he was.

Q And he was conscious of the fact that you were leaving him?
A Well, yes. I left him in the subway, naturally.

Q And did you feel that he was conscious and able to get off at the station he wanted to get off at?
A Well, I couldn't say as to that.

Q Well, if there was so much doubt in your mind as to whether he would be would land home safely or not, why didn't you go home with him?
A Because he wouldn't let me.

Q Well, he wasn't in a state of mind that he could judge for himself. Why didn't you do the judging?

MR. POSNER: Objected to.

THE COURT: Overruled.

MR. POSNER: Exception.

A When a man is drunk, if he doesn't want you to do a thing, you can't make him do it.

1904

CASE #1915

Q Did he prevent you from going on a subway train? A I didn't go as far as downtown. I just went to go with him.

THE COURT:

Q And you expressed interest in going off at the right station, you being a person who could go off? A Yes, I thought he would get off at the right station, naturally, when it was called out.

Q Now, I am going to ask you, if you were 120th Street, and if you were called on behalf of the company, would you go, and if so, would you go as follows:

DIRECT EXAMINATION BY MR. POSNER:

Q Now, you are not related to Abraham Levy, the lawyer? A No, sir.

Q Do you know Herman Schiff? A I do, sir.

Q How long have you known Herman Schiff, Mr. Levy? A About ten years.

Q What is your employment? A I am superintendant of one of the offices for the Metropolitan Life Insurance Company.

Q How long have you been in their employ? A Twenty one years, a little over twenty one years.

Q You say you have known Mr. Schiff for about ten years? A Yes.

Q And have known him intimately for that time, have

1905

CASE #1915

188
Q Yes.

Q Socially and in a business way? A Yes.

Q And do you know a number of friends of his and of your

friend?

Q A very large number? A Yes, sir.

Q Have you ever seen him frequently doing these things?

A I wouldn't say frequently. I would say fre-

quently.

Q You would say frequently? A Yes, sir.

Q And do you know what reputation he has in the com-

munity in which he lives, among his friends?

A Good reputation.

Q What is his reputation for honesty?

MR. KOLNIG: I object. That trait is not involved in
this case? A Very good.

THE COURT: I don't think honesty is involved here, but
truthfulness and morality and clean living.

BY MR. POSNER:

Q What is his reputation for cleanliness of life and
morality and clean living? A Very good.

Q You are a friend of his, are you not? A Yes, sir.

CROSS EXAMINATION BY MR. KOLNIG:

Q Have you ever heard that he drinks to excess? A No,
sir.

Q Having in mind the knowledge that he drinks to ex-

1906

CASE #1915

134
case on frequent occasions, and that any effect on your testimony?

MR. POSNER: I object to that. There is no effect on the case.

THE COURT: Objection sustained.

MR. POSNER:

Q Have you ever heard that a man who is drunk, or who has a different sense of morality, would do things that he would not do, sir?

Q Have you ever heard that a man who is drunk, or who has a different sense of morality, would do things that he would not do, sir?

No, sir.

Q Did you ever hear that he visited a woman, a prostitute, at 3 A. M. in the morning, at the solicitation of a negro boy?

MR. POSNER: I object to that as incompetent.

THE COURT: Objection sustained.

BY MR. KOENIG:

Q Having in mind that his sense of morality is different when he is intoxicated, would that fact make any change in your testimony?

MR. POSNER: Objected to.

THE COURT: Objection sustained.

H E N R Y M A Y E R , of 490 West End Avenue, a witness called on behalf of the defense, being duly sworn, testified as follows:

CASE #1915

DIRECT EXAMINATION BY MR. POSNER:

Q What is your business, Mr. Mayer? A I am a builder.

Q A builder? A Yes, sir.

Q How long have you been in the building business? A Twenty years.

Q Twenty years? A Yes, sir.

Q Are you a married man? A Yes, sir.

Q Family? A Yes, sir.

Q Do you know Herman Schiff, the defendant? A Yes, sir.

Q How long have you known him? A I have known him about twelve or thirteen years.

Q And have you known him intimately during that time? A Yes, sir.

Q In a social as well as a business way? A Yes, sir.

Q And do you know a large number of friends of his and yours? A Yes.

Q Have you observed him frequently during that time?

A In the earlier part of my acquaintance with him, for the first twelve years, but I haven't seen so much of him during the past year.

Q Do you know what his reputation is for truthfulness and veracity? A Very good.

Q Very good? A Yes, sir.

190

CASE #1915

Q And what is his reputation for decent and clean living?

A I have always considered him a model young man.

Q A model young man? A Yes, sir.

THE COURT: Cross-examine.

MR. KOENIG: No questions.

HUGO LEDERMAN, of 207 West 98th Street, a witness called to behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KOENIG:

Q How long have you known the defendant for some time?

A Fifty years.

Q Are you married?

Q And you have had occasion to associate intimately during those years? A Yes, sir.

Q Have you gone to social functions with him? A Yes, sir. We used to go together from three to five nights a week, for a number of years.

Q And do you know of any other persons? A Yes, sir.

Q Have you had business or social relations with him?

A My relations with him were mostly social. In fact, he was the best man at my wedding.

Q Are you a member of any organizations with him? A I am a mason, and he belongs to my Masonic fraternity.

MR. KOENIG: Of course, it is clearly incompetent and I ask that it be stricken out and the jury be instructed to

CASE #1915

1909

disregard it.

THE COURT: Motion granted.

BY MR. POSNER:

Q Are you able to state his reputation among the friends and in the community in which he lives, the highest class?

Q What is his reputation for morality?

Q And what is his reputation for honesty?

BY THE COURT:

Q Answer the question? A Yes, sir.

CROSS EXAMINATION BY MR. KOENIG:

Q Did you ever know him to visit a house of prostitution? A No, sir.

Q Would you believe that he would visit a house of prostitution, at three o'clock in the morning, on the solicitation of a negro boy?

MR. POSNER: Objected to.

THE COURT: Sustained.

BY MR. KOENIG:

Q If you were told that, at three o'clock in the morning, when solicited by a negro boy, he would visit a woman for the purpose of sexual intercourse, would that change your opinion as to his morality?

CASE #1915

189
MR. POSNER: I object to that, as incompetent and im-
proper.

THE COURT: Objection sustained.

BY MR. KOENIG:

Q You have travelled with him, have you not, you say?

A Yes, sir, I have.

MR. POSNER: Objected to.

THE COURT: Sustained.

BY MR. KOENIG:

Q And do you know whether he had any immoral relations?

MR. POSNER: Objected to.

THE COURT: Allowed.

MR. POSNER: Exception.

A No, sir, never.

BY MR. KOENIG:

Q And you would emphasize every remark that you make as to that? A Yes, sir.

Q And you want the jury to understand that, for fifteen years, he never had any immoral relations with a woman? A No, never, absolutely never.

Q And you swear to that? A Yes; to my knowledge, he never had:

SAMUEL FRY, of 1301 Madison Avenue, a witness call-

CASE #1915

ed on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. POSNER:

Q What is your business, Mr. Fry? A I am a...

Q Are you a married man, a man of family, sir?

Q In business for yourself? A Yes, sir.

Q Do you do a large business? A Yes, sir.

Q Do you know Herman Schiff?

Q How long have you known him? A I have known Herman for sixteen years.

Q You have seen him grow up from the time he was a young boy, have you?

MR. KOENIG: I object to the question as to form.

BY THE COURT:

Q Do you know others who know him well? A Yes, sir.

Q And you have been socially acquainted with him? A Yes, sir.

Q Have seen him a great deal? A Yes, sir.

Q And have had an opportunity to know something about his reputation? A Yes, sir.

THE COURT: Now, you may ask for his reputation.

BY MR. POSNER:

Q What is his reputation for honesty? A Well---

BY THE COURT:

Q Is it good or bad? A It is great.

CASE #1915

Q Good at heart? A Good.

BY MR. TOSNER:

Q Well, what is his reputation for decency and clean living? A I always thought it to be the finest and best.

Q The finest and best? A Yes, sir.

CROSS EXAMINATION BY MR. KOENIG:

Q You are very anxious to help him, aren't you, Mr. Fry? A Well...

Q I don't mean by telling any untruth? A Yes, I am. I like him very much.

Q And you would make your opinion as strong as possible? A Nothing stronger than necessary.

Q You didn't go out with him night after night, did you? A No, sir. I have ^{not} gone out with him, night after night, but I have travelled with him to Atlantic City and different summer resorts.

Q And you don't know his state of mind, or moral feeling, when he is intoxicated? A No, sir; I never seen him that way.

Q And you don't know his relations with women? A No, sir.

Q Or the personal things that a man usually keeps to himself? A No, sir.

Q He has not confided those to you; has he? A No, sir.

CASE #1915

I S I D O R E M E T Z G E R , of 131 West 126th Street ,
witness called on behalf of the defense being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. POSNER:

Q Mr. Metzger, where are you employed? A At 16-22
William Street, Lehman Brothers, Banking House.

Q How long have you been with that firm? A About a
third of a century.

Q About thirty-three years? A Yes, sir.

Q How old are you? A Sixty-six.

Q Sixty-six? A Yes, sir.

Q Do you know Herman Schiff? A I do.

Q How long have you known him, Mr. Metzger? A Prob-
ably fifteen years.

Q And you have kept in touch with him, have you, dur-
ing these years? A I have, to quite a degree.

Q To quite a degree? A Yes, sir.

Q And have you known him socially, intimately? A Yes
sir.

Q And somewhat in a business way? A I have.

Q And you know many people who know him? A I do.

Q Both young people and elderly people? A Yes, sir.

Q And have you had occasion to observe his conduct? A
Yes, sir.

Q And do you know what his reputation is among the peo-

1915

CASE #1915

ple that he has associated with and in the community in which he lives? A Absolutely good.

Q Absolutely good? A Yes, sir.

Q What is that reputation as to honesty? A Unquestionable.

Q And what is his reputation as to truth and veracity? A Unquestionable.

Q And what is it for morality? A Decent, clean living. May I elaborate on that?

BY THE COURT:

Q No, or say whether it is good or bad. A It's very good.

CROSS EXAMINATION BY MR. KOENIG:

Q I take it, sir, that you are not familiar with his doings at three o'clock in the morning, when in a state of intoxication? A That assumption is correct.

MR. POSNER: I object. And that assumption is improper and is knowingly improper.

THE COURT: I will sustain the objection, but I will not characterize it in the language of counsel.

MR. KOENIG: Then I will withdraw the question.

HENRY W. SCHIFF, of 18 East 60th Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. POSNER:

CASE #1915

Q You are a brother of the defendant, are you not,

Mr. Schmitt. A Yes, sir.

Q How old are you? A Forty-five.

Q Where were you born? A St. Louis, Mo.

Q In your life, have you ever had any partners?

Q And you have been married now long? A The last three years with partners, and associated with them for fifteen years.

Q And you are the oldest brother of the man? A I am, sir.

Q And you have known him and associated with him growing up from childhood?

MR. KOENIG: I object, if your Honor please. I will concede that the brother will testify to everything that is good of his brother.

THE COURT: Go ahead? A Yes, sir.

BY MR. POSNER:

Q He has lived in the same house with you until you were married? A Yes, sir.

Q And you have had occasion to observe him, day in and day out? A Absolutely.

Q And has he contributed to the support of the house, when you lived in the home?

MR. KOENIG: Objected to.

THE COURT: Sustained.

91617

CASE #1915

144
MR. POSNER: EXCELLENCE.

BY MR. POSNER:

Q Do you know others who know him? A Yes, sir.

Q And are you able to state, Mr. Smith, from your observation of him during these years, and from your daily contact with him, what his reputation is among the people with whom he associates and in the community in which he lives?

MR. ROBERT: It is quite objectionable in form, I submit.

THE COURT: Well, yes, it is quite general. You may ask his reputation for clean living and morality.

THE WITNESS: It has always been of the best.

THE COURT: Cross examine.

BY MR. POSNER:

Q Have you on particular occasion to observe his clean living.

THE COURT: Yes, he says so. Cross examine.

BY MR. POSNER:

Q Does that include his clean living and morality? A Absolutely.

MR. KOENIG: No questions.

BY MR. POSNER:

Q Did you endeavor to bring your father here? A I did.

Q And is he in a very serious condition of health at

CASE #1915

present.

MR. ROBERT: objected to.

THE COURT: Sustained.

MR. ROBERT: to rest, if your Honor please.

---COURT---

CASE #1915

REBUTTAL

Mr. Jackson, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. KOENIG:

Q Now, Jackson, were you taken out of that room at any time by the officers, prior to being taken to the station house?

MR. POSNER: I object to that as contradicting his own witness on that point, if your Honor please.

THE COURT: Overruled. He may answer the question.

MR. POSNER: Exception.

A No, I wasn't taken out of there; I went out myself. I went over to apartment 3 and the officers were standing right there at the corner.

BY MR. KOENIG:

Q Was there any examination made there of you by the officers? A Yes, there was.

Q Where? A Right at the door of apartment 3.

Q What did he do? A He looked at my tongue.

MR. KOENIG: That is all.

MR. POSNER: That is all.

MR. KOENIG: The People rest.

MR. POSNER: May I say this, if your Honor please, that Mr. Abraham Levy, who was formerly counsel in this case and has withdrawn from the case, has known this defendant for

CASE #1915