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Sent Mar 14/13
COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK. PART V.

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

MURRAY SCHECKMAN.
-----X

Before:

HON. WARREN W. FOSTER, J.

and a jury.

Indictment filed January 25, 1912.

Indicted for bribery, compounding a felony and attempted ex-
tortion, Sections 379, 370 and 2850 of the Penal Law.

New York, March 3, 1913.

A P P E A R A N C E S.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY ALLAN R. WELLMAN.

FOR THE DEFENDANT: MR. CHARLES GOLDZIER.

Peter P. McLoughlin,

Official Stenographer.

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MR. GOLDZIER: If your Honor please I desire to make a motion to take from the jury the first count of the indictment on the ground that it does not state any offense, and I have cited the authorities on my brief.

THE COURT: On what do you want to go to the jury, Mr. District Attorney?

MR. WELLMAN: Well, I think your Honor will agree with me that there is some question for the Court to determine as to what count the facts fit into. The defendant has been indicted on three counts, and I do not wish to elect at this time unless your Honor requires me to. I think it would be better for your Honor to hold the matter under advisement.

THE COURT: That is the usual practice. I will deny your motion at this time without prejudice. I am not going into the merits of the case in the absence of evidence. If you deem that insufficient facts are stated in the indictment your time -- while you can raise it at any time is to have raised it on demurrer at the time of pleading.

MR. GOLDZIER: But it can also be raised on motion. I want to make the formal motion so as not to waive it.

THE COURT: I understand that. I will overrule that formally. I don't pretend to have any knowledge of the matter as I have never heard of this case before.

MR. GOLDZIER: That is why I handed up the brief.

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In regard to the second count I make the same motion.

THE COURT: Motion denied; exception.

MR. GOLDZIER: In regard to the third count I will make the same motion.

THE COURT: Motion denied; exception.

Mr. Allan R. Wellman opened the case on behalf of the People as follows:

May it please the Court, Mr. Foreman and gentlemen of the jury. I realize that we are at the beginning of the term, and many of you gentlemen have never had the experience of being jurors in a criminal case before, so that, if you will allow me, I will ask you to pay a particular attention to this case. It is a case which -- I don't think my learned friend minds my saying to you, has been tried before, and, therefore, I am most anxious that you should --

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MR. GOLDZIER: This case has not been tried before.
It was on another indictment.

MR. WELLMAN: Well, on the same indictment.

MR. GOLDZIER: This indictment was superseded.

THE COURT: There is no mention on the face of this indictment of it having been tried before.

MR. GOLDZIER: It has not been tried before.

MR. WELLMAN: There was a new indictment drawn at the end of the other case, so technically this case has not been tried. The other indictment charged one of the crimes, one of the three crimes--

MR. GOLDZIER: I must object to the District Attorney referring to any other indictment in this case.

MR. WELLMAN: All right, Mr. Goldzier. I said I thought you would not mind my stating it because it would come out that the case had been tried before.

The case, however is a very simple one when the matters of law are decided.

The facts are these: On the early morning of November 29, 1911, a man named Benjamin Linn, who worked, up the state in a glass manufactory in Corning, 300 miles from New York, was being driven home from a rather too alcoholic celebration of Thanksgiving Day, and when on 47th street between 6th and 7th avenues he, in some way found himself on the street being abused and beaten by a cab driver and he, does not remember what that row was about,

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whether it was over the fare or what; but at any rate there was this fight there between himself and a car man. A small crowd gathered, and the cab driver got back into his box and drove over towards 6th avenue. This happened between 6th and 7th avenues on 47th street. Then the defendant was first heard of. When an officer came up from 7th avenue in reply to some one's shout for police the defendant told the officer that a cabman had assaulted this man, and had gone towards 6th avenue, that he had better chase him right away, and bring him back. The cab was fast disappearing down the block-- one of those large double City blocks, and they were about 50 feet east of 7th avenue so that there was nearly an entire block between them -- the cab was just turning the corner, going south or towards the south around the corner on 6th avenue when the officer caught sight of it, and gave chase. He went down to the corner, and there at the curb was a cab outside of a saloon, standing, and a man on the box talking to some friend evidently, who had his foot up on the wheel, and was smoking a cigarette, talking to the cabby. The officer hailed him and told him he would have to drive back; there was some argument between them that I am not allowed to state, and the man wanted to know why he was being brought back or something of that sort, and the officer made him, however, drive back to where the fight had occurred.

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When they got back there, Linn, the man who was intoxicated, was unable to recognize the cab driver as the man who assaulted him. The defendant, however, said "This is the man, this is the man", and the officer started to make an arrest. Both Linn and the defendant got into the cab and the officer got up on the box with the driver and told him to drive to the 47th Street station house. They had no sooner started when Linn opened the door and started to jump out, protested that they did not have the right man and that he did not want to go to the station house against this man. So they all got out and the driver pulled up on the other side of the street, the defendant, the officer, and the driver who got down from his box, all had a parley on the sidewalk -- the defendant, the cab driver, Linn and the officer. Linn protested that they did not have the man. The defendant said to the officer, "I am positive this is the man and if you look in his cab you will find an overcoat there that he threw into the cab when he went to strike this man", and the officer, of course, looked in the cab and there, sure enough, was a coat, a black rain coat. The cab driver stated then and there that he had always had the coat in his cab. That he had a raincoat for rainy nights and I believe this was a rainy night but it had cleared up. At any rate the officer decided to make an arrest. They all went over to the station

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house. When they got there Lieutenant Gilligan was at the desk in charge and the man Linn was charged with intoxication and disorderly conduct. He was unable to identify the cab driver, but the defendant again spoke up and said he had seen him assault Linn and that he was the man. So the cabby was locked up and Linn was also locked up and was to come before the Magistrate's Court the next day -- 54th Street West. When they got there Linn's case was first called, for intoxication. Magistrate Hermann was sitting and Linn admitted that he had been drunk and disorderly and the Magistrate discharged his case. He had been in the jug one night and the Magistrate thought that was enough. They all went to the complaint clerk's room and had a complaint drawn up against Lynch, the driver. Now, from the court -- now between the court proper where the judge's bench is in the complaint clerk's room there is a long narrow passage four or five feet wide and about 80 feet long which you have to pass through to go to the clerk's office. They all went through there. The officer had Lynch in charge, just as he passed in there -- and when they got to the complaint room Linn did not want to make a complaint; he said he was not at all sure this was the man, in fact, he thought he was not; that he did not want to be the means of putting any man in prison whose identity was not sure. So they brought them back before the Magis-

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trate again and the Magistrate was informed that he would not make a complaint. He then asked if there was any one who would make a complaint, any one who saw this, and I believe the officer told the Magistrate "I have a witness", and he brought Ellis from the body of the courtroom, where he was sitting and Ellis told the Magistrate -- he went under the name of Ellis, Murray Ellis -- he told the Magistrate that he had seen the cab driver, Lynch, assault Linn and had seen him put his hand in Linn's pocket and draw out some money and had seen the money in Lynch's hand. The Magistrate informed Linn then that it was a very serious case, it was not assault, but it was more than that, that it was robbery. Linn, mind you, up to that time had said nothing about stealing -- nothing about any money had been said. Linn still refused to make a complaint. Finally, Ellis, the defendant, said "I will make the complaint in the interests of justice". They started off for the complaint clerk's room for Ellis to make the complaint. The officer went ahead. I think that Linn as they went through this passage way was at the end, in the back. Lynch, as I said, went ahead and the defendant took hold of Lynch just as they started through this passage way and he said to him "Look here, Cabby, you are in pretty bad here", or words to that effect; I don't remember the exact words. "You are likely to get a year or more for this." The best

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thing you can do, if you got any money is to give it to me and fix this thing up here and now." Lynch said, "Not a damned cent, I am innocent and this man won't prosecute me, because I didn't do him any harm or assault him. I was not the man." "Well, he won't prosecute you, perhaps I will. I told the Judge just now that I not only saw you assault this man, but put your hand in his pocket and take money out of his pocket and that is a serious charge, that is robbery and you are liable to go away for a long time on that". Lynch told him that he would rather rot in jail the rest of his life than settle that case. He walked away from him towards the complaint clerk's office. Then he will tell you he approached the officer Lynch did, while the defendant was still out in the hall -- the defendant stopped apparently at some window there, or something to smoke -- and he went to the officer and told the officer that this man wanted money from him, asked his advice and the officer "See how much he wants, give it to him, only mark it first." so Lynch went back to the defendant, sauntered back to him and said, "I have been thinking this matter over; it looks pretty serious if you are going to say I robbed this man. How much do you want to settle the case", and the defendant said, "\$200". I haven't got two hundred, I don't think I can get that much." They had some talk and finally it was agreed that Lynch would give \$50. He said

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he had \$20 in his pocket and that he would get \$30 more when he went back to his stable. The defendant said to him, "All right, if you will give me \$50 I will end this thing right here and now". He gave him the twenty dollars. He will tell you that he tried to mark it in his pocket with a pencil but I believe those bills do not show any definite mark. Afterwards he went to his boss, who was in the body of the courtroom, and a man named Corrigan for whom he had worked for twelve years, and Corrigan gave him \$30 more and Corrigan went out in the toilet and marked the money, three ten dollar bills, came back and Lynch gave the money to the defendant. Then he said to the defendant, "How am I going to be sure you won't prosecute me or press the charge any way, and he said "I will give you a receipt for it". The defendant then up against the wall writes on one of his own cards, bearing his own name, not Ellis, but Scheckman, "Received in settlement of assault case \$50 M. Ellis." Lynch when he got the chance -- not seen by the defendant -- went up to the officer and said "He got the money". They brought them all back to the complaint clerk's room and Ellis then said to the complaint clerk, "I am not going to make this complaint, I don't see why I should be the goat in this case. I am not the loser." The officer brought them all down to the Magistrate again and the Magistrate asked why no complaint would be made by either of them. He had been inform-

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ed of the passing of the money. The officer had reported that to the clerk and the officer had some conversation with Linn. The Magistrate asked Linn right in front of Ellis if he had received any money or made any settlement in this case and Linn said "No, he had not". Ellis said nothing. He then sent them back to make out a withdrawal, a short affidavit withdrawing the charge, so that they might have some kind of a record. When an arrest is made, you have to have some disposition of the case and in this case the complainant withdrew the charge and the judge discharged the defendant. Then when they brought them before the Magistrate he said, "All right, the case is discharged". Then all walked out of the courtroom downstairs to the street. The officer kept close tabs on the defendant, he had him by the arm. When they got to the street he said, "Now, where is that \$50?" The defendant said, "What \$50?" And he said "That \$50 you got upstairs. Come on." "What are you doing, kidding me", the defendant said. "No, I am going to put you under arrest, where is this \$50, or I will have to take it from you." He went into his overcoat pocket, and brought out the marked money.

That is the case, gentlemen.

It will be submitted to you under one of these counts to be decided by the learned Court later on -- if it amounts to bribery, compounding a felony or anything of the sort. *attempted extortion*

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B E N J A M I N F. L I N N, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states that he lives in Corning, New York).

DIRECT EXAMINATION BY MR. WELLMAN:

Q You work for the Corning Glass Works, do you not?

A I work for the Stuben Glass Works.

Q Their factory is in Corning, New York? A Yes, sir.

Q What position do you occupy with them? A I am a commercial traveler.

Q How long have you been with them? A Three years.

Q So that in November, 1911, you were employed there?

A Yes, sir.

Q You are employed there now? A Yes, sir.

Q And before that where were you? A I was in Salt Lake City with the Oregon Short Line Railroad company with a level party.

Q As an engineer? A Yes, sir; civil engineer for one year.

Q Your home is in Rochester, N. Y.? A Yes, sir.

Q You came East three years ago, came back East? A Yes.

Q Now, do you remember Thanksgiving of 1911, whether you were in the city? A I was, yes, sir.

Q Do you remember that night what you did? A Yes, sir.

Q Now, where did you go that night, that is as far as you can remember? A I went to the theatre; I went up to the Park.

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Theatre on Columbus Circle and after the theatre I went and had dinner.

Q Did you have drinks at the dinner? A Yes, sir.

Q A great many? A Quite a few.

Q Well, do you remember what you did after you left dinner? A Well, not very much, no, sir, I was --

Q Tell, us just as much as you can remember, where you went? A I was intoxicated; I don't know very much about it.

Q Do you remember going back to your hotel? A Yes, sir; I came back to the hotel.

Q Where was your hotel? A At the Breslin.

Q On 29th Street? A Yes, sir; and Broadway.

Q Did you go out again from your hotel after you came back? A Yes, sir; I went out and I went over on Sixth Avenue.

Q What did you go for? A I tried to get another drink and they would not give it to me.

Q They would not give you a drink? A No, sir; they said I had enough.

Q Where did you go then. Do you remember taking a cab? A I got in the cab there.

Q Do you remember who the driver was? A No, sir.

Q Now, what is the next thing you remember? A Why, I was uptown somewhere where I was being beaten up on the street.

Q That is the next thing you recall? A Yes, sir; I was knocked out of the cab and I was on the street and someone was

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kicking me in the head and I was getting beaten up.

Q Just a little bit louder? A Getting beaten up; I was lying on the street and someone was hitting me and then when they got me on the pavement they were kicking me.

Q But you don't know who that someone was? A No, sir; I could not say who it was.

Q Now, what was the next thing you knew. Do you remember the officer coming along? A Well, indistinctly I remember there was a crowd of people there and there was an officer there, or two or three officers, I think, I don't remember very distinctly, and then I have a faint recollection of going into the jail,-- in the jail they took some keys from me and a pen knife and they put me in the cell and I do not remember much of anything until morning.

Q Do you remember when you were brought into the station house, anything that occurred before the Lieutenant. Do you remember that at all? A No, sir.

Q Just having your pocket knife taken from you? A Yes, just taking things from me before they put me in the cell.

Q What was the next thing you remember? A Well, the next thing I remember in the morning when I woke up.

Q Do you remember going to the Magistrate's Court? A Yes, sir; I went up, when they got us out I went up there before this judge.

Q Judge Hermann? A He said -- he wanted to know what

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was the matter and the officer who arrested me, who brought me in there said I was intoxicated and I acknowledged it, being intoxicated, and he said that he thought I had enough from being beaten up and having had to sleep in there and so he said I could go.

Q Now, where did you go from there, do you remember?

A (No answer).

Q You were all right that next day, weren't you? A Yes, sir; I was all right; I had a little hang over as the boys say.

Q You didn't feel any too well? A No, sir.

Q Do you remember where you all went after your case was discharged? A Why, we went back into the court here.

Q You mean the Clerk's Office? A Yes, sir, into the Clerk's Office.

Q Do you know how you reached that Clerk's Office? A We went through a door and down a long hall and there was another door.

Q And then the Complaint Clerk's Office? A Yes, sir; with a lot of chairs in there.

Q Now, just tell us what happened in there as nearly as you can remember? A Why we went in there and I was --

Q Do you remember being asked to make --

MR. GOLDZIER: I object to that. Don't lead him please. He can give his recollection. If it is faint we want to know that.

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Q Go ahead? A Well, then I went into the Clerk's Office, and then Lynch's case came up.

Q Well, what happened in the Clerk's Office that you remember? A Well, Lynch was accused of being in this trouble with me.

Q But in the Complaint Clerk's room, is what I mean?

A When we first went back there?

Q Yes, that's it. A I was to swear out an affidavit.

Q yes. A I was to swear out an affidavit.

Q Did you? A No, sir.

Q Why not? A Why, I didn't want to; I didn't know this man at all.

Q All right, Mr. Linn, then you went back to the Magistrate you said? A yes, sir.

Q What happened then? A I went back to the Magistrate and the Magistrate asked me why I didn't want to press the charge against this man and I said I couldn't rightly identify him, that I was in a condition where I did not know just what happened, and I says, "The man didn't look to me as though he would knock any one down and beat him up without any cause", and I said I would not, absolutely would not make a charge against him.

Q Was Ellis there at that time, the defendant? A He was there -- he was in the courtroom.

Q You mean the body of the courtroom? A Yes, sir.

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Q Where the spectators are? A Yes, sir; then we are before the judge and I said I would not make the charge and then the officer said -- he wanted to know why I would not and I told him -- then the officer said, "I have got someone here, a witness to the case"; then he brought Mr. Ellis up and Mr. Ellis said he would make the complaint.

Q Do you remember what was said between the Magistrate and the defendant Ellis? A Why he said -- he wanted to know if he said that he saw every bit of it.

Q What did Ellis say? A He said that he saw every bit of it; he saw the cabman punch me and take the money out of my pocket.

Q Did you state anything about money having been taken out of your pocket? A No, sir. And the judge said, "That isn't -- that is more than assault" he said, "that is robbery too", so he said -- Ellis said he would place the complaint in the interest -- for justice's sake, that is to see the right thing done. Then we went back, went out of there to place the complaint.

Q Now, then, do you remember leaving the Magistrate present then and who you went with then back to the Complaint Clerk's room? A I was with the officer who arrested me.

Q Where was Lynch, do you know, do you remember? A Lynch was behind us, I think.

Q Do you remember where Ellis was? A Ellis and Lynch,

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I think were behind us and Officer McAvoy and I went ahead.

Q Go ahead? A Then I went back there and stayed in the hall, right there by a window and had a smoke.

Q Just a minute. See if you can point out to us on this diagram which I show you and which we will call People's Exhibit 1, for identification, the window you referred to that you were sitting by or standing by smoking? A Is this the court (referring to the diagram)?

Q Read it and see what it says? A That is it, the court, we came out here and came down this way (indicating).

Q Down that hallway? A Yes, sir, as I remember it.

Q This is the court you see and you came out this way and down this hallway? A Yes, sir; down this long hallway.

Q This is the complaint room? A Yes, sir.

Q Is that the window? A Yes, sir (indicating a window).

(The diagram referred to is marked for identification, People's Exhibit 1.)

Q You say the officer went which way? A The officer came down this way with me (indicating).

Q When you stopped there, where did he go? A I think he went on this way, I am not sure as to where he went but I stopped here and had a smoke.

Q By the window? A yes, sir.

Q Where were the other two? A The other two were in back of us; I could not swear where Officer McAvoy was but I think he went up here (indicating).

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Q Into the complaint clerk's room? A I think so, yes.

MR. WELLMAN: Can we not have this demonstrated?

MR. GOLDZIER: Yes, sir.

WELLMAN: (Addressing the jury) This is the courtroom here, and this is the passage way and this is the complaint clerk's room (illustrating). The witness states that going through this passage way he stopped at this window on the way to the complaint clerk's room, and that the defendant and Lynch were some where in back of him (indicating).

BY MR. WELLMAN:

Q How long were you there at that window before anything transpired? A Well, I should say about 15 minutes, 15 or 20.

Q What was the next step. What next took place that you saw, what then happened? A Went back to court.

Q You went back to court? A Yes, sir.

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Q Do you know in the meantime just where all the parties were? A No, sir; I could not say. 19

Q Do you remember being there at that window for fifteen minutes? A Yes, sir, fifteen or twenty minutes.

Q Then you all went back to the court? A Yes, sir.

Q What took place before the Judge at that time?

A Well the Judge wanted to know if a complaint had been made, and I said I was not going to make any complaint and then Mr. Ellis said he was not going to make any complaint.

Q He said he wouldn't make one? A No, sir; so the Judge said "Who is going to make one, and I said " I will not, I absolutely refuse", and he said that he was not, he was not the loser, and it was not his loss.

Q He said he was not the loser? A Yes, sir; and he was not going to make the complaint, so then we all went back again.

Q Do you remember signing a paper when you went back? A We went back; there was a little fellow back in there and he asked me to sign a paper.

Q Is this the paper which I show you? A Yes, sir.

MR. WELLMAN: I ask that it be marked in evidence.

(The paper referred to is marked People's Exhibit 2 in evidence.)

MR. WELLMAN: We can call that the affidavit withdrawing the charge (referring to People's Exhibit 2).

(The diagram is admitted in evidence and marked People's Exhibit 1 without objection and subject to the cor-

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reaction.)

BY MR. WELLMAN:

Q Now, then, after you had signed this paper were you brought back before the Magistrate again? A Yes, sir.

MR. GOLDZIER: I object to his being brought back.

Q Did you go back? A -I was escorted back by the officer; we all went back and the Judge asked me if I still refused to make a complaint, and I said, "I certainly do". He said, "Well, has this fellow settled it with you in any way, has he given you any money or anything."

Q Where was the defendant when the Judge said that to you? A We were all there at the bar.

Q All there before the Judge? A Yes, sir; I said, no, sir.

Q Did the defendant say anything at that time? A No, sir; he did not say anything; I was the only one that spoke; then he got me to swear to this affidavit.

Q To this (referring to People's Exhibit 2). A Yes, sir.

Q Then what happened? A I swore to it, and then we went out.

Q The Judge dismissed the case? A Yes, sir.

Q Do you remember that? A Yes, sir.

Q You went out and what happened. Go on. A We went down to the court room door; I walked downstairs and Mr. Ellis and the officer were walking ahead of me and the officer had his arm locked through Mr. Ellis', and when they got

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out on the street I heard Officer McAvoy ask Mr. Ellis for \$50, and I turned around -- I was just starting for the hotel-- and he said --

Q Did you know anything about that before? A No, sir; he said "where is that \$50", and I looked around and he was protesting with him -- arguing the matter in some way, and he said, "Now wait a minute you better go back with us", he said, that he had Mr. Ellis arrested.

Q He said he had arrested Mr. Ellis? A Yes, sir. We went back up into the court, and stayed around there for a few minutes, and he said, I could leave and I went back over to the hotel.

Q That was the first you knew, you say, of any \$50?

A Yes, sir.

Q You hadn't been told about it? A No, sir; I did not know anything about it.

CROSS EXAMINATION BY MR. GOLDZIER:

Q Is your recollection very clear now as to what occurred that day, one year ago? A Why, no, I don't think it is, sir.

Q It was not very clear, your mind was not very clear even on that day, was it? A Well, it was ^{fairly} clear.

Q But it was somewhat yet under the influence of liquor now, wasn't it? A Well, not very much, sir.

Q To some extent, yes, sir.

Q This occurrence, whatever it was, so far as you remember

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took place early in the morning? A Yes, sir; it was.

Q Two or three o'clock? A It was along in there somewhere,

Q You were locked up in a cell from then until what time? A I could not say what time it was in the morning.

Q Don't you know when you came before the Police Magistrate? A No, sir; I couldn't say, I should imagine it was the ordinary time court convened, I should say about 8 o'clock.

Q You were brought there pretty early before the Court convened, weren't you? A No, sir; we came right out there.

Q When the Court convened? A Yes, sir.

Q What had you done during the time from say three o'clock in the morning until 8 o'clock when the court convened, what did you do? A Why, I tried to sleep.

Q You did not succeed very well? A Why quite well, yes, sir, under the circumstances it was rather difficult.

Q But it was not an uninterrupted sleep, not a very sound sleep? A No, sir; not there under the conditions.

Q So that your condition was not very good mentally or physically when you were before the Magistrate, was it? A Oh, yes.

Q Perfectly good? A No, sir; not perfectly good, as I stated before it was not.

Q Damaged to some extent? A A trifle.

Q Now, did you have a conversation with this man Lynch

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on the way over to the station house? A No, sir.

Q How were you and Lynch brought to the station house--
I mean, excuse me-- how were you and Lynch brought from the
station house to the court? A In the patrol wagon.

Q In the same wagon? A Yes, sir.

Q You and Lynch sat near to each other in that wagon?

A I think he was right across from me.

Q How many other persons were there in that wagon?

A I don't think any other persons.

Q You were the only two? A I think so, yes, sir.

Q Was there any police officer in the wagon? A Yes, sir.

Q With you, locked up in the wagon? A No, sir; there
was an officer riding with us.

Q On the outside? A No, sir; inside.

Q In the wagon? A Yes, sir.

Q Did you have a conversation with the police officer
in the wagon? A No, sir.

Q Did you have a conversation with Lynch while you were
in the wagon? A No, sir.

Q Not one word? A Nothing that I remember, sir.

Q Now, will you say that you had no conversation with
Lynch and that he did not speak, and you did not speak to him
while you two were taken in the patrol wagon to court? A Not
that I remember, sir.

Q Now, can you remember that you did not say anything
to him? A I couldn't swear to it, no, sir, but as I remember

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it, I did not.

Q Well, your memory on the last occasion when you were in court, which is quite sometime ago, was fresher as to what occurred then, than it is now, isn't it? A Why, I don't think so, no, sir; it might have been; it was a little nearer at hand, of course.

Q It was somewhat fresher, wasn't it? A It might have been a trifle.

Q Do you remember when you were in court on this case?

A Yes, sir.

Q That is about a year ago, isn't it? A I believe it is, yes, sir, just about a year ago.

Q You mean to say your memory about this matter is substantially as fresh now as it was a year ago? A Well, of course, I don't say that it would be absolutely, no, sir.

Q Have you been speaking with anybody about this case?

A No, sir. I have talked to certain people, yes, sir.

Q Give us the certain people that you talked with?

A I talked with this gentleman here, Mr. Wellman.

Q Mr. Wellman? A Yes, sir.

Q Didn't you talk with Mr. Weller about the case? A Yes, sir.

Q Didn't you talk with Lynch about the case? A No, sir.

Q Didn't you talk with the police officer about the case? (No answer.)

MR. WELLMAN: Mr. Weller is the Assistant District Attorney who tried the case before.

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BY MR. GOLDZIER:

Q You won't say you never had any conversation with Mr. Weller about the case? A Yes, sir.

Q Mr. Weller? A Yes, sir.

Q He asked you about it? A Yes, sir; I said I did.

Q And Mr. Wellman? A Yes, sir, this gentleman here, (referring to Mr. Wellman).

Q Now, when you were at this hotel you had some jewelry with you, isn't that a fact? A Yes, sir.

Q Do you remember whether you had this jewelry on or not when you went out? A It was taken away from me.

Q By whom? A By the management of the hotel.

Q Did you know about that before this occurrence?

A No, sir.

Q Now isn't it a fact that when you were in court and had the first memory about this transaction that you missed your jewelry? A Sir?

Q I asked you that when you had the first memory, clear memory or recollection about the transaction which was in the police court, the Magistrate's Court you missed your jewelry, isn't that the fact?

MR. WELLMAN: I object to the form of the question. It is assuming that his first memory of it was in the Magistrate's Court.

THE COURT: I will allow it.

Q Isn't that so? A Yes, sir.

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Q Isn't it a fact that at that time you thought that you had been robbed of the jewelry? A Yes, sir.

Q At that time you thought that the man who might have assaulted you might have robbed you of the jewelry? A Yes, sir, that is my impression.

Q Didn't you miss some money too? A Yes, sir.

Q How much? A Well, about \$19.

Q Now the jewelry you found at the hotel afterwards?

A The following day.

Q The following day? A Yes, sir.

Q At the time when you were in court you didn't know this jewelry had been taken from you at the hotel? A No, sir.

Q But you missed it? A Yes, sir.

Q Did you ever find this \$19? A No, sir.

Q You were robbed of the \$19 as far as you know?

A Yes, sir.

Q By the man who assaulted you? A Yes, sir.

Q Then it was a fact that in addition to being assaulted you were robbed of some money? A Yes, sir.

Q How much was this jewelry worth? A Well, I would say about, all told, about eight or nine hundred dollars.

Q Now then when you were before the Magistrate you assumed that you had been deprived of property to the amount of more than eight or nine hundred dollars, isn't that so? A I think that was the amount, yes, sir.

Q Weren't you anxious to get back your property? A I

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certainly was.

Q Didn't you state to the magistrate or some one there in the court, that all that you cared for was to get your property back? A No, sir.

Q Made no such remark? A To the Magistrate?

Q To the Magistrate? A Yes, sir.

Q That was the fact that all you cared for was to get your property back? A Yes, sir.

Q You didn't care about prosecuting the man who had robbed you? A No, sir.

Q You had forgiven him, his misdoing? A Forgiven who?

Q The man who robbed you, whoever he may be? A No, sir; I didn't think anything about that, I didn't know where he was.

Q You did not care to prosecute anybody for robbery?
A No, sir.

Q You so expressed yourself freely to the Magistrate or to any one there? A Sir?

Q Didn't you tell the Magistrate that you did not care about prosecuting this man? A Who?

Q That you didn't care about any criminal prosecution that you wanted your property back? A Of whom?

Q Isn't that substantially what you told the Magistrate?
A I told the Magistrate I didn't want to prosecute this man that we had before us, this Mr. Lynch; I didn't want to prosecute Mr. Lynch because I could not say anything against him.

Q Did you tell that to the Magistrate? A Yes, sir.

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Q But you also told him that you wanted your property back? A Yes, sir.

Q Which was the fact? A Yes, sir, certainly sir.

Q Now were you first brought before the complaint clerk or first before the Magistrate? A Well, before the Magistrate.

Q Then the Magistrate sent you to the complaint clerk? A Yes, sir.

Q Is that so? A Yes, sir.

Q After having discharged you, is that so? A Yes, sir.

Q Lynch was then a prisoner in charge of the officer, McAvoy? A Yes, sir.

Q You were not a prisoner? A No, sir.

Q But the police officer walked with you through this long hall? A Yes, sir.

Q And the prisoner walked in back of the police officer? A Yes, sir.

Q Do you remember that there is a staircase at the beginning of the hall here -- is that so? A Where you come in?

Q Yes. A Yes, sir.

Q Then the police officer was in front with you? A Yes, sir.

Q And the officer was in the back with the staircase in the back, isn't that so, that fact? A May I have that repeated?

Q You were in front with the police officer walking towards the complaint room? A Yes, sir.

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Q The prisoner in charge of that police officer was in the back with a staircase in his back? A He was in back.

Q In the back of the policeman? A Yes, sir; back of the policeman.

Q With a staircase right behind him? A With Mr. Ellis.

Q Was he in charge of Mr. Ellis and this prisoner, was he in Mr. Ellis' charge? A What prisoner.

Q The man who was charged with the robbery was he placed in the charge of Mr. Ellis? A I couldn't say as to that.

Q You said he was the prisoner of Officer McAvoy, isn't that so? A We were all going down the hall --

Q You said he was the prisoner of McAvoy? A I supposed so.

Q Did you say that?

THE COURT: Let him answer, please.

Q Now answer -- but you said that just now or not, is that true? A What?

Q That this prisoner Lynch was in charge of Officer McAvoy, is that so, is it true, was he in charge of him?

A Yes, certainly.

Q Then the police officer walked with you talking to you, is that so? A Yes, sir.

Q Allowed his prisoner to walk behind is that so?

A Yes, sir.

Q Talking to the man who wanted to prosecute? A Yes, sir.

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Q That is true? A Yes, sir.

Q With a staircase that you could go up or down, is that so? A I don't think he would let him get out.

Q I didn't ask you whether he would let him get out, but I want to know whether there wasn't a staircase in the back of the police officer and of the prisoner through which he might have gotten out? A Yes, sir; that staircase.

Q Yes, that staircase? A Yes, sir..

BY MR. WELLMAN:

Q Do you remember the staircase? A Yes, sir; I remember the staircase.

Q Do you remember the door leading to it? A Yes, sir.

BY MR. GOLDZIER:

Q Was the door open? A I don't remember, sir.

Q Now, of course, you and the police officer were in conversation, weren't you? A Yes, sir.

Q You didn't watch as to what was going on between Ellis and the alleged robber behind you, did you? A No, sir.

Q So far as you know the police officer neither did not watch as to what was going on? A I could not say as to that.

Q You couldn't say? A No, sir.

Q But he was talking to you? A We stood there by the window, yes, sir.

Q You walked down this long hall? A Yes, sir, walked down near to the window.

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Q Now, when you came to the window, did the police officer go along towards the complaint room? A That was my idea of it, that he went ahead.

Q Where was Mr. Ellis, and this alleged robber? A In back of us I think.

Q Were they standing or what? A I could not say.

Q Did you see them pass you after the police officer had passed you? A No, sir; I was there -- out there, looking out the window.

Q They may have been standing there for quite awhile talking to each other? A Talking to me?

Q To each other? A I couldn't say with regard to that.

Q Without the police officer around? A I could not say.

Q Now, when you went to the complaint -- when you came to the complaint clerk who spoke first? A The complaint clerk.

Q What did he say? A Well, he wanted to know if I was the man who was making the complaint?

Q What did you say? A I said I wasn't going to make any complaint.

Q Who else spoke? A At that time?

Q Yes, at that time? A I don't remember.

Q Well some one spoke? A The complaint clerk.

Q After you had said that you would not make a complaint some one spoke isn't that the fact? A The com-

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plaint clerk.

Q Was he the last one who said anything? A I believe he was.

Q And the last thing that occurred between you and the complaint clerk, so far as you know, was that you said you would not make a complaint? A Yes, sir.

Q What took place then? A Then we went all out again.

Q How did you walk that time through that hall? A I don't remember.

Q You don't remember whether you did walk with the police officer? A I don't remember going back, no, sir.

Q You don't remember that at all? A Yes, sir, certainly.

Q Well, do you know with whom you talked while going back? A No, sir, I talked with a policeman, a police sergeant, I think they said he was.

Q With a police sergeant? A I don't know, he was some one, they said, from the Central office.

Q Who said he was some one from the Central Office?
A Mr. McAvoy.

Q A Central Office man -- where was he? A He was by the window too.

Q Here? A Where I had been smoking.

Q Mr. McAvoy introduced you to the Central officer?
A No, sir.

Q Well, who told you? A I was talking with this guy

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tleman in a casual way about things absolutely foreign to the case.

Q When did you first find out from the police officer that this was a Central officer -- after you had been to the complaint clerk, and when you returned? A Oh, I couldn't say, it was sometime along during the afternoon. I inquired where this officer came from; he seemed like a genial sort of a fellow, was very pleasant, and I asked McAvoy where he was from, and he told me he was from the Central Office now I think he called it.

Q At the time you asked McAvoy this where was his prisoner? A I couldn't say just when it was that I asked him who it was.

Q Can you say where the alleged robber, who was in charge of Mr. McAvoy, was, when you had that friendly talk with McAvoy? A It wasn't then; it wasn't at this particular time that you state.

Q Was that after Lynch had been discharged from imprisonment, at the time McAvoy told you that was a Central officer? A It was after the thing was all over.

Q Do you know that for certain? A I think so, yes, sir.

Q You don't know it for certain? A It was after -- it wasn't while anything of any importance was going on.

Q Never mind about anything of importance. I want you to give us your best recollection as to when that was?

MR. WELLMAN: That Lynch said he was a Central

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Office man?

MR. GOLDZIER: That McAvoy said -- the time --
I want to know whether it was after McAvoy had been released of the charge of the alleged robbery.

THE WITNESS: Why, yes, that was after.

BY MR. GOLDZIER:

Q It was afterwards? A Yes, sir; I think it was afterwards.

Q You think again? A Yes, sir.

Q Is that your best recollection? A Yes, sir.

Q How many conversations did you have at that time with Ellis and Scheckman, the defendant in this case? A Why, he was there, and I think I asked him for a cigarette or he asked me for one.

Q You can't remember even that? A Yes, sir.

Q Which was it. You asked him for a cigarette or he asked you? A No, sir; I don't remember which that was, I suppose we had two or three together.

Q Let us see, Is that the only conversation you had with Scheckman during all that time, was it you asked him for a cigarette or he asked you for a cigarette? A We were standing there by the window, sir, and having a smoke.

Q Who is we? A Mr. Ellis and I.

Q Where was McAvoy and Lynch? A I could not say.

Q They were not standing there? A No, sir; they were not right there.

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Q At that time you were separated from the officer and this robber? A Well, for a short time, and then Mr. McAvoy--

Q For how long a time? A Three to five minutes.

Q You had a conversation during that time with Scheckman, didn't you? A A conversation, yes, sir, for two or three minutes and then Mr. McAvoy joined us.

Q What? A And had a cigarette with us.

Q I want you to give me what the conversation was before Mr. McAvoy joined you. What was it, what did you say to Scheckman and what did he say to you? A Well, it was--

Q Give me everything that was said? A I can't remember everything that was said.

Q You can't remember? A No, sir.

Q Can you remember anything? (No answer.)

Q The officer asked for a cigarette? A Well, let us see, we spoke about business, different business we carried on.

Q And what else? A About -- he said he was a piano salesman, I think, and I told him I was a commercial traveler; we talked there in a casual way, that is about all there was to it.

Q That is all for about three or five minutes? A Yes, sir.

Q Then you say McAvoy came? A Yes, sir.

Q Where was Lynch when McAvoy came up? A He was in

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the hallway, that same hall.

Q Somewhere in the hallway? A Yes, sir.

Q You don't know where he was? A No, sir, but I think in the hallway.

Q The hallway is quite a big hallway, isn't it?

A Yes, sir.

Q With a front and rear to it? A Yes, sir.

Q And sides? A Yes, sir.

Q You were standing at the window? A Yes, sir.

Q Weren't you? A Yes, sir.

Q At this end of the hallway? A This right end.

Q That was you and Ellis or Scheckman and the police officers? A Yes, sir.

Q Can you indicate where the prisoner was? A No, sir, I could not.

Q You have no recollection about it? A No, sir; near the stairway

Q He may have been at the other end, as far as you know? A He might have been, yes, sir.

Q Now, what did McAvoy say when he came up? A Well, he had a cigarette.

Q Did he ask you for a cigarette? A No, sir.

Q He had one? A No, sir; I offered him one, I believe.

Q Is that all that took place between you and McAvoy?

A I think so, yes, sir unless it was something absolutely--

Q Foreign to the issue? A Ordinary, that we would not, either of us, think anything of.

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Q The case was not spoken about there? A No, sir.

Q Did you speak to Lynch at all? A Lynch?

Q Yes. A At all? How do you mean by "at all".

Q Did you speak to Lynch at any time and, if so, when for the first time did you speak to Lynch at any time from the beginning of the world to the present day? A I trust that you mean that day -- you mean that day that we were there?

Q I suppose that is the first time you saw Lynch?

A Yes, sir.

Q Now, that day when did you talk to him that day?

A (No answer.)

Q When did you first speak to Lynch and then under what circumstances? A Well, it was in the hallway there.

Q That same hallway? A Yes, sir; in that same hallway.

Q Near the stairs or near the window? A Well, it was about half way between.

Q Was that after you had refused to make a charge against him? A I think it was.

Q Did he also ask you for a cigarette, or did you offer him a cigarette? A No, sir.

Q Now what conversation did you have with the man who had been charged with robbing you? A He spoke to me and he asked me if I thought that he was the man that hit me.

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Q And you said? A I said I did not.

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

Q Was Ellis there or Scheckman? A No, sir.

Q Then you had a conversation with this man all by yourself? A Yes, sir.

Q This man Lynch? A Yes, sir.

Q Was the officer there at that conversation? A The officer wasn't far from us.

Q How far from you was he; you say it was in the center, how far was the officer from you? A We were here at the window.

Q This is the window here (indicating)? A I imagine we were about in here (indicating).

Q You and Lynch? A Yes, sir.

Q Where was the officer? A The officer I should say was about in there. (Indicating)

Q About ten or fifteen feet away? A About ten feet from us.

Q Could he hear the conversation. Did you speak so that he might hear you? A The officer? I don't know how good his hearing is.

Q Did you speak loud or in whispers? A We spoke in ordinary tones like you and I are speaking now.

Q Now after you had said you didn't think he was the man what did he say? A He kept speaking of his family.

Q He told you he was a man with a large family? A A

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man with a family, yes, sir.

Q He wanted to get your sympathy? A I don't know.

MR. WELLMAN: Objected to.

(Question withdrawn.)

Q What did you tell him? A Well --

Q Anything about your family? A No, sir; I didn't have; I have now.

Q Have you given us the whole conversation between you and Lynch at that time? A Why, I think so, yes, sir. that is, unless we said it was a nice day or something of that sort.

Q It was a very pleasant conversation? A Yes, sir.

Q You had no ill feeling against the man at all?

A None whatever, sir, I did not feel that I could have.

Q You are certain now that he did not assault you?

A Well I am absolutely sure that he did not.

Q That he did not? A Yes, sir.

Q But not from the recollection of what occurred at the time of the assault? A I didn't think he was then, sir.

Q Do you remember that he was not the man who assaulted you -- do you remember who was the man that assaulted you?

A I said I did not think that he was.

Q I ask you do you remember that he was not the man who assaulted you? A As near as I remember he was not.

Q Then you have a memory as to the man who did as-

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sault you? A No, sir.

Q Haven't you? A No, sir.

Q If you have no such memory how can you say that he was not the man that assaulted you? A I feel that he is not the man.

Q I want to know whether you say now from what you remember of the assault that he was not the man, but some other man assaulted you? A What I remember of the assault I cannot place Mr. Lynch--

Q Can you tell us any other man as the person who assaulted you? A No, sir; I can't place any one.

Q You have no description of the man who assaulted you? A No, sir; I can't remember.

Q You have no memory as to how the man who assaulted you looked? A No, sir.

Q How he was dressed? A No, sir; if he was right here in this room--

Q You would not recognize him? A I would not know him, no, sir.

Q Now, after you had that conversation with Ellis or Scheckman, did you go back to the Judge? A We went back to the Judge a second.

Q A second time? A Yes, sir; I think that was the second time.

Q That was the second time? A Yes, sir.

Q Who spoke first to the Judge? A The Judge spoke

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first.

Q What did the Judge say? A He wanted to know "What you are going to do now about it."

Q Is that what he said. Are you giving the Judge's words? A As near as I remember them -- what conclusion had we come to, and what were we going to do.

Q Who spoke up then? A I did.

Q What did you say? A I said I wasn't going to press any charge against this man.

Q Did Ellis say anything? A He said that he would press the charge.

Q Was that after you had had your conversation with Lynch; did this occur after you had your conversation with Lynch? A Yes, sir.

Q After you had had your conversation with Ellis?
A Yes, sir; that was the second time we were up.

Q After you had had your conversation with Officer McAvoy? A Yes, sir.

Q Now when he said he would press the charge what did the Judge say? A The Judge told him to go back and swear out a complaint.

Q What else? A To sign the complaint.

Q Then you walked back? A Yes, sir.

Q Through the same corridor? A Yes, sir.

Q How was the order of the march then? A As I remember--
pardon me -- I walked alone.

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Q In front? A I couldn't say, sir.

Q Did you see Lynch? A Yes, sir, Lynch was there.

Q Did you see McAvoy? A Yes, sir.

Q Was Lynch with McAvoy? A I think he was, I think Lynch and McAvoy and Ellis were together.

Q The three of them together? A Yes, sir, I think so; I kind of lagged behind.

Q How far ahead were they of you? A Well, various distances, I should suppose, it is an eighty foot hall.

Q You came to the complaint clerk then? A Yes, sir.

Q Who spoke there? A Then Mr. Ellis spoke.

Q What did he say? A Well, he either had a complaint made out for him I think, or asked him was he going to make one.

Q What did he say? A I don't remember, sir.

Q You were there? A No, sir.

Q Where were you at that time? A I was in the back of the complaint room.

Q Well, who was before the complaint clerk? A The officer and Mr. Ellis.

Q Where was Lynch? A Lynch was between Ellis and the officer and myself -- in the rear.

Q In the hall? A No, sir.

Q In the rear of the room? A As I said before, yes, sir.

Q Can you indicate on this map about where the officer

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stood and where Lynch stood? A At what time.

Q The second time when Ellis was before the complaint clerk? A Is this the complaint room?

Q This is the complaint room? A I was in here and I believe this is a seat --

Q Will you mark where you were with an "A" after the second time they were before the complaint clerk? A I would not mark it, I would not say exactly where I was but I was in the rear of the complaint room.

Q Can you tell me where Lynch stood? A Lynch as I remember, was about right in there, somewhere in there (indicating).

Q Somewhere in there? A Yes, sir.

Q Where did the officer stand? A He stood in the complaint desk.

Q That was here? A No, sir; ^{was} that/there (indicating).

Q Lynch stood somewhere behind the officer? A No, sir.

Q Now, isn't it a fact that Lynch stood behind the officer? A Behind the officer -- yes, sir.

Q The officer having his back towards Lynch? A I could not say with his back or side.

Q You don't know that? A No, sir; I think it was his side.

Q Do you know in whose charge Lynch was that time? A He was in charge of the court, I suppose.

Q You suppose that? A Yes, sir.

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Q But there was no one -- was there any one? A He couldn't get out of there.

Q I don't want your suggestions. Was there anybody who stood by Lynch for the purpose of seeing he should not get out?

A For the purpose of keeping him in there?

Q Was there anyone standing beside Lynch? A No, sir; no one had hold of him.

Q Was anybody standing beside him, any officer? A Where he could have made one step and he grab him --

Q Who? A Officer McAvoy.

Q You say from this complaint desk? A I should imagine--

Q From here was one step? A I should imagine about five feet.

Q Five feet? A Yes, sir.

Q What is your best judgment? A Five feet.

Q The distance between the door and this complaint desk is 36 feet? A 36 feet?

Q You say that where he stood here, in about the center, was about five feet from the officer; is that your best recollection? A About five feet he was -- he was from the officer about five feet.

Q Can you indicate where that was if the officer stood right in front of the desk? A No, sir; I can't tell; the sketch there shows.

Q Now, what was the next thing? A The next thing was we

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went back again; that is we were just going back when you brought out that chart.

Q Now, you were just before the complaint clerk? A Well, then there was no complaint made.

Q You don't know what took place before the complaint clerk? A Well, no, sir.

Q Now, that is what I want to know? A No, sir; I do not know.

Q Then you all walked back? A Yes, sir; we all went back.

Q Before the Magistrate again? A Yes, sir.

Q How was the march then, you first? A I don't remember that.

Q Nothing at all about that? A No, sir; I can tell you whether I walked with the officer or not.

Q Or whether Lynch walked with the officer or how you walked, you don't remember? A No, sir; I don't remember.

Q Now, when you came before the Magistrate who spoke first? A The Magistrate.

Q What did he say? A He wanted to know who was going to place it now.

Q What is that? A He wanted to know who was going to place the complaint now.

Q Is that what he said? A I think that is it.

Q What did you say? A What did I say? I haven't said

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anything at all; I haven't said that I said anything.

Q The Magistrate spoke first? A Yes, sir.
BY MR. WEILMAN:

Q What did you say -- what is that reply to the last question? A The last question was what did the Magistrate say?

MR. WEILMAN: What was the answer?

THE WITNESS: The Magistrate said, "Who is going to place the charge" as I remember it, he inquired as to who was going to place it .

Q Who answered? A I for one answered.

Q What did you say? A I said, I am not going to place it.

BY MR. GOLDZIER:

Q Who spoke? A Then Mr. Ellis spoke.

Q What did he say? A He said he wasn't going to place it.

Q Is that the precise language? A Well, as near as I remember; he said he would not place the charge, that he was not-- it was my own loss, that he did not, was not losing anything, that he wasn't going to go any further with it.

Q Well, what did the Magistrate say to him? A The Magistrate asked me, he said "Well, now," he says "did you get any pecuniary settlement?" And I said, "No, sir".

Q What else took place? A (No answer).

Q You knew it was illegal to make a pecuniary settlement of this case at that time when you told the Magistrate you did

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not you had not made any pecuniary settlement, isn't that so?

A Yes, sir; I didn't think of it.

Q You knew it was against the law? A I always thought it would be, yes, sir.

Q What took place then? A Then the Magistrate had me swear to this.

Q He sent you back then? A He had me swear to it right there.

Q The affidavit was brought along? A Yes, sir, the paper that I signed that one that you showed there was brought up, I think he read it, or I read it, and he asked me if I would swear to it, and I said I would.

Q (Let me see this affidavit). A As I remember he read it to me.

Q Where did you file that affidavit? A That affidavit was signed in the clerk's office.

Q Before you came before the Magistrate? A Yes, sir.

Q The second time? A Yes, sir.

Q You knew as a matter of fact, at that time that the complaint was to be withdrawn when you signed this affidavit?

A I assumed that was what it meant.

Q How did you come to assume that?

A From what the clerk back in the complaint room said; he wanted to know if I would sign this withdrawal of the complaint and I said yes if he handed me a pen and he said "Put your name right there", and I signed it.

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Q That was after Scheckman and McAvoy had stood in front of the clerk's desk? A Yes, sir; that was afterwards.

Q Then, when you were before the Magistrate he discharged Lynch? A He discharged Lynch the last time, the case was settled then, and we went out.

Q It was settled? A Yes, sir.

Q He discharged him? A Yes, sir; the case was over, and I went right out.

Q Did you go out by yourself? A No, sir, I stepped back and then they all went down.

Q Who went down? A Officer McAvoy and Mr. Ellis.

Q Now, where Lynch at that time? A Where was Lynch? He was with the party right behind us.

Q Now, at that time Officer McAvoy had hold of the criminal, Ellis or Scheckman, by the arm, isn't that so?

A We were all walking down there together.

Q He had hold of him by the arm? A No, sir.

Q Didn't you say something about his having hold of him by the arm, having his arm in his? A He had his arm linked with his.

Q In a friendly way? A In what I supposed to be a friendly manner.

Q But he kept him there by his side, by holding him by the arm? A No, he did not; I don't see why he would; if any one linked arms with me I would think they were trying to hang

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on to me.

Q If it was a police officer, you wouldn't consider that anything? A No, sir.

Q Now, you knew nothing at that time about Ellis being arrested, or about to be arrested, did you? A Not until he was arrested, no, sir.

Q No one had spoken to you about it? A No, sir.

Q Then you went back with Ellis? A Back up in there again and then they said he was arrested.

Q You wrote a letter about this case, isn't that so?
A Yes, sir.

Q In which you stated that you would like to?

MR. WELLMAN: I object to that.

THE COURT: (To the jury) Do not talk about this case or permit anybody to talk to you about it and do not form or express any opinion thereon until the case be finally submitted to you.

(The Court then adjourned the further trial of the case until tomorrow, Tuesday morning, March 4, 1913, at 10:30 o'clock).

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New York, March 4, 1913.

TRIAL RESUMED.

BENJAMIN LINN, a witness called on behalf of the People, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. GOLDZIER:

Q You remember that prior to the trial upon the other indictment the attorney representing the defendant asked you to be a witness in behalf of the defendant? A Yes, sir.

Q Don't you? A Yes, sir.

Q You remember writing him a letter? A Yes, sir.

Q Is this the letter you wrote? (No answer.)

Q That is your signature, isn't it? A Yes, sir; I dictated that letter.

MR. GOLDZIER: I offer the letter in evidence.

MR. WELLMAN: For what purpose?

MR. GOLDZIER: We will see for what purpose. To contradict the witness.

MR. WELLMAN: I object to it as immaterial. It does not contradict anything the witness has said here.

THE COURT: What is it you offer?

MR. GOLDZIER: I offer the letter itself.

MR. WELLMAN: I have not any very serious objection. I would just as lief have it read rather than have any mystery in the case.

THE COURT: In what respect does this contradict

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the witness?

MR. GOLDZIER: There is one paragraph which contradicts him.

THE COURT: Which is it?

MR. GOLDZIER: I will read it if your Honor will allow me or I will point it out to you. He says, "I merely told him that all that I desired was that which was justly due me."

MR. WELLMAN: He has said that here.

THE COURT: You may, on consent, state to the jury what he wrote, and you may then cross examine him about it.

MR. WELLMAN: I withdraw any objection. Read the whole thing.

MR. GOLDZIER: (Reading) "With regard to the affair about which you speak I have to say that I did not authorize Mr. Ellis to receive any money in my behalf. I merely told him that all that I desired was that which was justly due me".

Q Now, is it a fact that you did tell Ellis, or Scheckman that what you desired was that which was due you?

A I told Judge Herman and Michael Lynch.

Q Did you tell Mr. Ellis?

MR. WELLMAN: Let him answer you.

THE WITNESS: I told Judge Herman that Michael Lynch and Mr. Ellis and whoever else might be there at the bar, just those words that all I wanted was what was

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justly due me.

MR. WELLMAN: That is what he said yesterday. He did not want to prosecute.

MR. GOLDZIER: Excuse me, but I want to cross examine this witness.

THE COURT: Mr. District Attorney you should not interrupt with a comment.

BY MR. GOLDZIER:

Q Do you mean to say you stated to Justice Herman when your the question of having been robbed came up before him that you did not want to prosecute the man accused of robbing you, but that all that you desired was that which was justly due you? A Yes, sir.

Q Now, what do you mean by that expression "all that you desired was what was justly due you? A That is all I wanted, was what I had lost.

Q Then you did want the return of the property that you had lost? A Yes, sir; naturally.

Q You expressed yourself in Ellis' presence, to the effect that you wanted the return of the property lost by you? A Yes, sir.

Q At that time in addition to having actually lost about nineteen dollars you thought you had lost jewelry to the amount of nine hundred dollars? A Yes, sir.

Q You wanted the return of that jewelry and of the money

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that you had been deprived of? A Yes, sir.

Q Is that so? A Yes, sir.

Q And so stated in court in the presence of Ellis?

A Yes, sir.

Q Did you have any conversation with Ellis after that?

A I couldn't say.

Q That you don't know? A No, sir; we went out.

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

RE DIRECT EXAMINATION BY MR. WELLMAN:

Q Did you write this "I did not know Mr. Ellis at all, and could not inform you as to the attitude he took or what his idea was in receiving said money". A Yes, sir.

Q Now, as to the matter of jewelry you stated before the Magistrate, did you not, that you had missed some jewelry? A Yes, sir.

Q What did you say you had missed that night? A Why, I had missed my ring, and my stick pin and watch and walking stock and overcoat.

Q And you said some amount of money? A Yes, sir; some amount of money.

Q What was the amount which you stated to the Magistrate?

A I think it was about nineteen or twenty dollars.

Q Now, after you stated that, did Ellis speak to you and say that he had seen you robbed of the property?

A Yes, sir.

MR. GOLDZIER: I object to this leading of the wit-

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ness.

THE COURT: This is re direct. Ask him what

Ellis said.

BY MR. WELLMAN:

Q What did Ellis say? A He said that he had witnessed the whole affair and he had seen me robbed.

Q Was that the first time he had mentioned anything about seeing you robbed? A Yes, sir.

Q When you got back to the hotel, did you find your jewelry? A Yes, sir; I inquired for it from the manager Mulligan, and he said that it was in the safe, that the house detective had taken it away from me up in my room.

Q Why, did they say why? A Why, I was --

MR. GOLDZIER: I object to what they said.

THE COURT: Objection overruled.

MR. GOLDZIER: We can imagine

MR. WELLMAN: I would like to have him say it.

MR. GOLDZIER: I object to that.

THE COURT: Objection overruled.

Q Did you ever find out that you had given anything away that night? A Yes, sir; some of my samples.

Q Now, do you know when you lost your money? A Why, I presume that it was in this shuffle up there when I was knocked down in the street.

MR. GOLDZIER: I object to that, to the witness

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stating that he presumed that a certain thing took place.

I object to that and ask that it be stricken out.

Q Just tell us about that, about the loss of your money?

A Why, I had --

Q When did you know you had twenty dollars or nineteen dollars? A When I left the hotel.

Q In the meantime do you remember what you did? A No, sir.

Q You heard that you had been giving things away?

A Yes, sir.

Q Why do you say that it was taken at the same time you were assaulted. Have you any recollection of the money being taken from you? A No, sir.

Q Now, you did have a conversation with Ellis, did you not, in the complaint clerk's office, do you remember?

A Yes, sir.

Q Before the complaint was made up? A Yes, sir.

Q Now, do you remember what that conversation was or the substance of it? A Why, just for me to go ahead and place the complaint.

Q Were you reluctant to sign the complaint? A I didn't want to place it, no, sir.

Q Now, just tell, or give us some idea how insistent he was that you should make that you should make that complaint? A Why, he told me --

MR. GOLDZIER: I object to his characterizing how

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insistent he was. If he gives us the conversation I am perfectly willing.

THE COURT: I sustain the objection.

Q Give the conversation.

THE WITNESS: He said, to place this complaint to get something out of the fellow, to put a complaint on him, and I said I would not, I did not think that he was the man that did it, that was all, I would not do it; he told me to do it again and I said "no, I won't".

Q Then it was he went before the Judge and said he would do it? A Yes, sir.

Q After telling you why didn't you do it, and get something out of it? A Yes, sir.

Q Is that right? A Yes, sir.

Q And the last trial you gave your testimony the first day, did you not? A Yes, sir.

Q When did you leave for home? A Why, I left for home. I was excused right after.

Q Before the end of the trial? A Yes, sir.

Q Before the defendant had given his testimony?

A Yes, sir.

RE CROSS EXAMINATION BY MR. GOLDZIER:

Q In the order of things when did you first state to the Magistrate that you wanted to get what is due, after Ellis had suggested that you might get something out of the

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man or before? A After.

Q Then upon the suggestion of Ellis that you might get something out of this man, of your property, or some money or property, you made that suggestion to the Magistrate in the words, which you have stated, isn't that so? A Yes, sir; before the bar .

Q Mr. Ellis did not say to the Magistrate that you had been robbed of your jewelry by this man, did he? A He did not specify what I have been robbed of, I don't think.

Q What did he say ~~to~~ you had been robbed of? A He said I had been robbed.

Q Is that all? A He said that he had seen the man with his hands in my pocket.

Q Well, you did ^{not} wear your jewelry in your pocket?
A No, sir.

Q Didn't he say also that he saw him take some money out of your pocket? A I think he did.

Q Then all that was spoken of was money by Mr. Ellis?
A I could not say as to that.

Q So far as you heard or that he spoke? A He said that I was robbed. You can take that as you want it.

Q He said as a matter of fact there -- he also said that the man put his hand in your pocket and took some money out of it, is that so? A I don't think he did.

Q You just now said it? A He said that I was robbed and he also put his hands in my pocket.

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Q Didn't you say something about money just now?

A I may have so stated.

Q Didn't you say something just now? A I don't think so. I --

Q Do you remember what you said just now or don't you?

A I said I saw him put his hands in my pocket and rob me.

Q Nothing was said about money? A No, sir; I don't know, it might have been. Did I say about money?

Q You said it here? A Yes, sir.

Q Something was said about money? A Yes, sir.

Q You are satisfied about that now? A Yes, sir.

M I C H A E L L Y N C H, a witness called on behalf of the People, being duly sworn, testified as follows:

(THE WITNESS states that he lives at 404 Wythe avenue, Brooklyn.)

DIRECT EXAMINATION BY MR. WELLMAN:

Q Lynch, what is your business? A At present I am a foreman of a livery stable.

Q Have you been a cabdriver? A Yes, sir; for fourteen years.

Q Fourteen years? A Yes, sir.

Q Have you driven for some one else or had your own equipment? A Always for myself.

Q For yourself? A Yes, sir.

Q Have you any one under you, or did you ever have?

A Yes, sir; sometime one, sometimes three or four.

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Q Where did you stable your horses and carriages?

A 338 West 25th street.

Q Is that Mr. Corrigan's stable? A Yes, sir.

Q How long did you stable with him? A Twelve years.

Q Twelve years? A Yes, sir.

Q Now, in November, 1911, how many cabs did you have of your own? A Four.

MR. GOLDZIER: I object to this. This gentleman is not on trial here.

MR. WELLMAN: No, indeed he is not.

Q How many horses?

MR. GOLDZIER: It is immaterial how many cabs he had.

THE WITNESS: Two horses I --

THE COURT: I think the objection is well taken. You do not need to bolster up the character of the witness.

BY MR. WELLMAN:

Q Now, do you remember on the night of the 29th of November, 1911, or rather the early morning? A Yes, sir.

Q After Thanksgiving Day where your cabstand was? A Yes, sir; 47th street, it was on the southwest corner of 47th street and 6th avenue.

Q How long had you been accustomed to standing there?

MR. GOLDZIER: I object to that as immaterial.

A About nine years.

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MR. GOLDZIER: It makes no difference whether he was guilty of the crime or not. His character is not in issue here.

MR. WELLMAN: That question was not directed to the character of the witness. It was as to where he kept his stand.

THE COURT: Now, it is answered, and the objection comes too late. Get down to what you want to prove.

BY MR. WELLMAN:

Q Now, on the night in question, or rather the early morning, did you see Officer McAvoy at any time? A Yes, sir.

Q About what time was it he came along? A About 2.45 as near as I can judge.

Q Where were you at that time? A On my cab speaking with a chauffeur, the chauffeur had his foot up on the hub of the wheel and was asking me to borrow some money from me.

Q Do you know who that chauffeur was?

MR. GOLDZIER: I object to that.

MR. WELLMAN: I withdraw the question. I will press the question then.

Q Do you know his name? A I only knowed him by the name of Whitey.

Q You say he was talking with you. How long had he been there before the officer came along? A How long? About thirty five minutes.

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MR. GOLDZIER: I want this stopped so that I can put in my objection.

Q When the officer came along what was said?

MR. GOLDZIER: I object to that.

MR. WELLMAN: Question withdrawn.

MR. GOLDZIER: I am objecting to a line of testimony and my learned friend continues to examine.

THE COURT: Please do not talk two at the same time. On voice kills the other.

MR. WELLMAN: The question is withdrawn.

THE COURT: There is nothing pending.

Q What happened after the officer came along?

MR. GOLDZIER: One moment. I object to that that was not in the presence of my client.

THE COURT: He may tell us what happened.

MR. GOLDZIER: Exception.

Q Don't state, Lynch, anything that was said, just what happened and where you went. A The officer told me to drive down.

MR. GOLDZIER: I object to that.

THE COURT: Objection sustained.

Q You don't understand the rules of court procedure, of course. You cannot give a conversation unless the defendant who is on trial was present. So don't state anything that was said unless Ellis or Scheckman was there. So, when the officer came along where did you go? A I drove down

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to where this man Ellis and Linn were standing with a policeman on the street and Officer McAvoy rode on the seat with me.

Q He rode down with you? A Yes, sir.

Q When you got there you say Ellis was there? A Yes, sir.

Q Was he right by Linn? A Close by, within two feet.

Q What took place. You can state now -- proceed.

A The officer asked Mr. Linn if I was the man, and he looked at me in a dazed sort of a way, and he said "No, officer, I don't think he is." This man, Ellis, spoke up and said, "Officer, that is the man, I seen the whole thing." He says to Linn, "is he the man", and Linn said "no". "We had better settle this in the station house" the officer says, "get into this cab we will go to the station house". Both of them get into my cab and I started to drive towards the station house with the officer on the seat alongside of me. Just as I started off, got the wheels going nicely, went ahead, and all at once looked around and this man Linn is jumping out of the cab. I says, "Hold on, officer, that man is jumping out". We stopped and Mr. Linn got, Mr. Ellis also got out. Linn said, "I won't go to no station house. This is not the man."

Q Who said that? A Linn "you haven't got the right man, officer, I won't go to the station house." The offi-

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cer said "Pull your cab away from here anyhow." I pulled the cab across the street about a hundred or more feet, and the officer stood and looked up and down, I don't know just what is the matter at this time. I walked back and found out what the trouble is. I got up close to them, and I said to Linn, did I injure you? "Why, no." This man Ellis said, "Officer", he says, "this is the man, I seen the whole thing, you go over there, and see if there is a coat in that cab. If there is this is the man." The officer went over and there was a raincoat in the cab where I usually keep it. It was raining that night. The officer said, "We will go to the station house". So then they both got inside in the cab again, and the officer got on the seat with me. I drove to the 47th street station house. We got over there and Mr. Linn said he didn't think I was the man, he didn't think that I looked liketheman, he said that he had never seen me before." This young man says, "Captain", addressing the man that was in the station house behind the desk, he said, "I am twenty three years old, I have never taken a drink in my life, I know what I am talking about, this man is drunk, I seen the whole thing, I seen this man assault him", and the policeman looked me up.

Q What did the defendany say he saw you do? A He said he saw me assault him. he seen the whole thing, and he also emphasized the fact that he is the man who never took a drink in his life, and knew what he was speaking about, wherein the

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other man was intoxicated, and he didn't know. The lieutenant complimented him, and said he wished he had more citizens in New York like Mr. Ellis.

Q After that you were in the jail? A Yes, sir.

Q What next? A The next morning I was taken to court and Mr. Linn was arraigned before I was and he was discharged. Then we were taken back, and Mr. Linn was to draw up the complaint against me. When he got before the complaint clerk--

MR. GOLDZIER: I ask for what was said.

MR. WELLMAN: Quite right.

Q Don't state that he made a complaint. Give us everything that you remember about what was said? A Mr. Linn, when I was arraigned before the Magistrate, Mr. Linn refused to complain against me as he told the Magistrate he did not think I was the man.

Q If you can remember what words did he use when he refused? A "Your Honor, I don't think this is the man, and I will not prosecute him because I cannot honestly prosecute a man when I am not sure of him; I don't think he is the man." The Magistrate then asked the policeman if he knew anything about it and the policeman said, "No, I was not there, but I have a witness in court." Whereupon the policeman called this defendant Ellis and he came forward and spoke to the Magistrate and said, "I seen this whole thing, and I seen this man assault him, and I seen him rob,

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him, and I seen him put his hand in his pocket, and saw the money in his hand after he took the money out of his pocket." Whereupon the Magistrate says, "This is a more serious complaint. You better have it amended," and have it to make another charge against me. We all went back to the complaint clerk's office, and when we got back there this man Linn looked at me and he says "I don't think this is the man. I won't sign no complaint." Then Ellis was urging him to sign it, he was urging him--

MR. GOLDZIER: I object to that. State what was said.

Q State what words he used in urging him. A I was too far away to hear, but Ellis was close by to the clerk that was writing out the complaint, and furthermore he says, "Young man, if you don't deists right away I will have you arraigned before the Judge. You cannot intimidate anybody in this court." Whereupon this defendant stopped urging Linn.

MR. GOLDZIER: I ask that "stop urging" be stricken out.

MR. WELLMAN: I consent.

BY MR. WELLMAN:

Q Go ahead. A Then Mr. Linn refused to sign the complaint. We both back, all four of us, the officer, this defendant, Mr. Linn and I went back before the Magistrate and Mr. Linn refused to complain.

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MR. GOLDZIER: I object to that. Ask him what he said.

THE WITNESS: He told the Magistrate "I cannot conscientiously prosecute this man as I don't think he is the man." Somebody in the court there, I don't know was urging Mr. Linn to prosecute me, but he said, "no, I don't think this is the man". Whereupon the Magistrate asked this young man would he prosecute.

Q The defendant? A Yes, sir.

Q Would he prosecute? A Yes, sir. "I will." We are starting out of the court room like you would go out this way, (Indicating) out through the hall. The officer and Mr. Linn is a couple of feet, three or four feet, say two steps ahead of us. This young man stops to talk to me and he says to me, "Cabby, you are in a pretty bad fix, Cabby, you better get some money and give it to me, and settle this thing." I said, "Not a damned cent will I give you".

I says "That man knows I am innocent, and he wouldn't prosecute me." "Well, you heard what I said, "I will swear to that, I will swear that I saw you assault that man and put your hand in his pocket, and that I saw money in your hand after you took it out of his pocket, that will give you a year or more so that you better get together and get me some money." I says, "I will rot in jail the rest of my life before I give you a damned cent." I walked away

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from him. The officer was standing in the complaint room where this young man had his elbow on the window. I walked over to the officer when I seen his back turned, and said to the officer --

MR. GOLDZIER: I object to that unless it was within the hearing of the defendant.

Q Was Ellis there? A Ellis was in the hallway with his elbow on the window sill.

Q Then Lynch you cannot say what you said to the officer. But did you have a conversation with the officer? A I told the officer that man wanted money off me.

MR. GOLDZIER: I object to that.

Q You can't give the conversation. You went up to the officer, and you said something to him? A Yes, sir.

Q Did he say something to you? A Yes, sir.

Q You can't say what it was? A Yes, sir.

Q What did you do after that? A I went back in the hallway, and I told this defendant that I would re-consider the matter, that it looked back for me, and I would settle with him. I asked him how much he wanted and he said about \$200. I said, "The idea is ridiculous, where would a poor cabby with a big family get \$200." "How much can you get?" "I probably could get \$50", "all right you give me \$50, and I will withdraw this thing right here, settle it right here." Whereupon I had two tens in my pocket that my stable boss gave me that morning, and I took a pencil

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out of another pocket, and put it down there, and tried to mark them as I thought. I handed those two ten dollar bills to him on account with the agreement that I was to go to the livery stable where I boarded my horses to get the other thirty. "You act upright and honest with me, and I will squash this case right here. I will settle this right here."

Q He said that? A Yes, sir. After a while I told the officer I paid him.

MR. GOLDZIER: I object to that.

Q Don't give any conversation unless the defendant was there? A The defendant walked after me again and he says, "Have you no friend in the court you could raise the money off, it would be better for me to receive it now, and I will give you a receipt for it." I says, "Hold up a minute, I will try. I went out by the corner of the railing and put up my finger to my table boss."

Q That is Corrigan? A Mr. Corrigan. He walked down to me and I says--

MR. GOLDZIER: I object to that conversation.

Q You can't give that conversation. Did you get any money from him? A I got thirty dollars from him in marked bills.

Q Then what did you do with them? A I gave them to Mr. Ellis and got a receipt off him for it.

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Q I show you fifty dollars in bills, four tens and two fives and ask you if please examine those and state whether that is the same money? A Well, of course, I cannot be positive of that.

Q Can you identify any of it? A These are the same kind of bills I gave him, these two yellow backs I gave him first.

Q You gave them? A Yes, sir.

MR. GOLDZIER: These are not marked.

MR. WELLMAN: They have no mark upon them.

THE WITNESS: Now these here are the same denomination of the bills that I gave him the second time. Of course, I cannot be positive that they are the same bills, they are the same denomination.

Q These three? A Yes, sir, these four.

Q Two fives and two tens? A Yes, sir.

Q I notice that three of those have little blue pencil marks, and one five dollar bill has none, is that right? A So I understood; of course I did not see them marked.

MR. WELLMAN: All right, we will explain that. I ask to have the bills marked for identification.

(The bills are placed in an envelope and marked People's Exhibit 3 for identification.)

Q Is this the receipt which the defendant gave you?

A That is the same handwriting that was on the back of it,

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of course, this part here I could not be positive about, but that is the same name on the back of the card he gave me.

Q This part here? A Yes, sir.

Q Is that the same as the receipt that was given you?

A That same writing and the same words on it.

(The receipt referred to is marked People's Exhibit 4.)

(Mr. Wellman reads people's Exhibit 4 to the jury as follows: "Received settlement for assault charge, M. Ellis", and on the other side "Maurice Scheckman, representing two firms, the Oriental Shirt Waist Co., and the Pansy Manufacturing Company, and their business addresses.)

Q Where was that written by the defendant? A In the hallway, up against the wall, he just put the card up against the wall, and wrote it in the hallway.

Q Now, one question. When the defendant spoke to you as you left the Magistrate's room, rather the court, and said "Cabby, you are in pretty bad", were you in fear at that time?

A Yes, sir.

Q From what he said to you? A Yes, sir.

Q Of course, after you had reported the matter to the officer, and actually gave him the money were you in fear then? A No, sir.

Q Now after the receipt was given you, and you gave the money to the defendant what happened next? A All four of us went back before the Magistrate. Mr. Linn refused to make a complaint, and Mr. Ellis said, "As I am not the loser, I am not going to be the boob in this case; I am not the loser, won't prosecute."

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Q Then did the judge say anything? A The judge said, "Did you come to a settlement, did you make any settlement?" "No, sir".

Q Who said that? A Mr. Linn.

Q Did the defendant say anything at that time? A No, sir; the defendant didn't say a word; he was not asked any questions.

Q Where was he standing? A He was standing right at the left hand of Mr. Linn.

Q And where did you all go? A All four of us marched out of the courtroom.

Q Do you remember an affidavit withdrawing the charge being drawn and Linn swearing to it? A Yes, sir.

Q Before you were discharged? A Yes, sir.

Q Where did you go after that? A We all filed out of the court room downstairs, down on to the sidewalk, and the officer, McAvoy, walked down arm in arm with Mr. Ellis and down there was another officer and they, both of them, placed him under arrest, asked him "Where is that \$50, give me that fifty". He laughed and said, "What fifty?" "Give me that fifty dollars", the officer spoke rather rough and he says, "Are you kidding me".

Q The defendant said that? A Yes, sir. "Are you kidding me" and the officer said, "Now, you are under arrest, I will take it away from you if you don't give it to me." There-

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upon he put his hand into the little coat pocket, and he took out \$50, handed it over to him; they looked at it, identified it there and they were all taken back to the court room then.

Q Did you tell your story there? A Yes, sir.

Q What he said to you in the hall? A Yes, sir.

Q As you have told it here? A Yes, sir.

Q Cabbie, have you ever been arrested before this?

MR. GOLDZIER: I object to that as irrelevant and immaterial.

MR. WEILMAN: I withdraw it.

CROSS EXAMINATION BY MR. GOLDZIER:

Q This was quite a long hallway, wasn't it, from the courtroom? A Yes, sir.

Q To the complaint clerk's desk? A Yes, sir.

Q When you first came before the Magistrate, what did Mr. Linn say about not prosecuting you? A Mr. Linn said he didn't think I was the man.

Q Did he say he had lost some property? A No, sir.

Q At no time? A Yes, sir; he did afterwards, but not the first time.

Q What did he say about the loss of his property? A After this young man had told the Magistrate that he seen me assault and rob him the Magistrate asked him if he had lost any property and he said yes.

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Q What did he say that he had lost? A He had lost a ring, a pin, a watch, an overcoat, a cane, and \$19 in money, and the Magistrate estimated about what the value of that was, and some of them, he said, had a sentimental value, but all told, he thought about eight or nine hundred dollars.

Q Now, was that the first time you were before the Magistrate? A No, sir.

Q The first time you were before the Magistrate nothing was said about the robbery? A No, sir.

Q Then when Ellis was to make the affidavit it was upon the charge of assault is that so? A Well, when Ellis was to make the affidavit it was upon the charge of assault and robbery.

Q Was that the first time? A No, sir, that was the third time that Ellis was to make the complaint.

Q Then you were before the Magistrate three times?
A Yes, sir.

Q Now, the first time was when you were arraigned and when Linn absolutely refused to make any charge? A Yes, sir.

Q Now, what was said then about the charge between the Magistrate and the defendant, about who is to make the charge?
A He asked the officer if he knew anything about it and the officer said "No"; but the officer said "I have a witness here", whereupon he called this man, Ellis, as a witness.

Q Did anyone question Ellis? A The Magistrate asked

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him what he knew about it.

Q What did Ellis say? A Ellis said he seen me assault this man, put my hand in his pocket and rob him.

Q Something was said about robbing at that time? A By Ellis.

Q Linn didn't say anything about having been robbed?

A No, sir.

Q Not a word? A No, sir.

Q Did the Magistrate then say anything about making a complaint? A The Magistrate said to go back and amend the complaint.

Q To whom did he say to go back and make a complaint?

A To Linn and Ellis both, Ellis was to go back with us, all four of us, to go back.

Q At that time Linn had not refused to make a complaint -- he has, in the first instance? A Yes, sir.

Q When was it he said, "Go back and make a complaint". Did Linn say he would not go back and make a complaint? A He did not say no.

Q He did not say no to the Magistrate? A No, sir.

Q Now, you went through this hallway. You were arrested by McAvey? A Yes, sir.

Q And in his charge? A Yes, sir.

Q At that time? A Yes, sir.

Q His prisoner? A Yes, sir.

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Q Now, you say that Linn and McAvoy went ahead? A Yes, sir.

Q How far ahead of you? A A step, probably five feet, two steps, or a step and a half.

Q So what conversation that you might have had with Ellis was not heard by Linn and McAvoy? A After Ellis started the conversation we stopped to go slowly and the other two proceeded ahead.

Q Then you, the prisoner, and Ellis, in whose charge you were not, stopped behind? A Yes, sir.

Q And the police officer, in whose charge you were, with the complainant went ahead? A Yes, sir.

Q Into the clerk's room? A Not into it.

Q How far ahead of you did they go? A They were probably 15 feet ahead of us.

Q Were they walking along? A They met a Central office man in the hall that spoke to Linn; he brought Linn back -- this officer turned around and watched me while I held a conversation with Ellis.

Q Now just one moment. Who saw you while you had the conversation with Ellis? A McAvoy.

Q What did the Central office have to do with that matter? A I heard him say as he passed me with Linn "If you let this man go he will go out and do the same thing again." And what Ellis said, I did not hear.

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Q Who said that? A The Central office man.

Q He said that to whom? A To Linn as they walked past me.

Q The officer stood some fifteen feet -- the officer in whose charge you were stood some fifteen feet away from you?

A As far as from here to that man over there, looking directly at me.

Q Now, did you then walk up to the officer? A No, sir; the officer walked into the complaint clerk's room where Ellis and I -- he came up to this window.

Q Where was Linn at that time? A Well, Linn was back of us in the hall with the Central office man.

Q Linn wanted to get out, is that it? A No, sir; the Central office man was talking to him very earnestly, what about, I don't know.

Q But Linn was in the act of leaving the complaint clerk's room and going out? A No, sir; it was more the Central Office man taking him out of my hearing to converse with him.

Q You and McAvoy and Ellis stood by the complaint clerk's desk? A McAvoy was in sight of the complaint clerk's desk and in sight of us at the same time, Ellis and I at the same time.

Q But Ellis was not at the complaint clerk's desk? A Ellis and I were conversing in the hall and there was a number of men waiting there for their turn, ahead of us.

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Q Now, that was before you went to the complaint clerk that you were speaking in the hallway? A Yes.

Q After you and Ellis were before the complaint clerk? A No, sir.

Q Who was before the complaint clerk? A We didn't go there after that.

Q You didn't go to the complaint clerk at all? A No, sir; not after I gave him the money; we didn't make out any complaint.

Q Did you give him the money after you had been before the Magistrate the first time? A The second time that I was before him -- the second time.

Q I am talking about the first time after you had been before the Magistrate the first time? A No, sir.

Q I wanted to know how you passed from the Magistrate's Court into the complaint clerk's office the time you left the Magistrate? A We walked -- the hall is narrow, the four of us could not walk abreast.

Q The officer and Linn walked ahead? A I am not positive the first time whether they walked ahead or whether they were ahead the first time.

Q If Linn says he and the officer were ahead would you say that this was not true?

MR. WELLMAN: I object to that.

A I would not, because Linn was all twisted that morning.

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Q He was twisted? A Yes, sir.

Q Did you remember walking with the officer that time?

A Yes, sir, the first time.

Q Did you go to the complaint clerk? A Yes, sir.

Q What was said then before the complaint clerk? A Mr. Linn was to draw up the complaint and sign it; he refused and this man Ellis was urging him to, as I told you before, when the complaint clerk told him "If you don't desist" --

Q What was Ellis telling him at that time? A I could not hear; I was back --

Q How can you say he was urging him if you didn't hear what was said? A From the way the complaint clerk says, "Young man, if you don't stop intimidating this witness I will have you taken before the Judge."

Q In a very rough voice? A Yes, sir; got very mad.

Q Then Linn absolutely refused to make the complaint?

A yes, sir.

Q You went back before the judge? A Yes, sir.

Q Now, what took place before the judge? A Linn told the judge that he could make no complaint that he would not, that he could not identify me, that he didn't think I was the man and he said, "I would not complain or prosecute anybody except I thought he was the right man, but I would like to regain my property if I could or any part of it".

Q What did the Magistrate say? A The Magistrate said

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that the best way to regain your property is to prosecute.

Q Upon that did Linn say he would prosecute? A Linn did not say anything; he was urged by the officer to go back.

Q Urged by the officer? A Yes, sir.

Q By whom, McAvoy? A No, sir, this Central Office man, I don't know who he was; I don't know his name, I could identify him.

Q How could the central office man urge him to go back?

A He held an earnest conversation with him; I heard him say "If you let this man get out, he will only go out and do the same thing over again".

Q Did Linn eventually say he would make a complaint?

A He walked back, whether he said he would or not, I did not hear him say, but he walked back.

Q He didn't say so to the Magistrate? A No, sir.

Q Did Ellis say he would make a complaint the second time you were before the Magistrate? A Yes, sir.

Q Now, then Linn said he would not make a complaint the second time you were before the Magistrate? A The second time? Yes, sir, he refused to make a complaint the second time.

Q And Ellis said he would? A Yes, sir.

Q So at that time when you had the conversation with Ellis after leaving the Magistrate the second time -- at that time you were still in charge of Officer McAvoy? A Yes, sir.

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Q You were walking through that long hall? A Yes, sir.

Q How far ahead of you was McAvoy? A Well, McAvoy at the time Ellis spoke to me was probably a step and a half, just as close as we could walk.

Q He did not listen to the conversation? A This young man caught me by the arm and said "Cabby" in a low tone "Cabby you are in bad."

Q He held you back? A We both slacked up.

Q And McAvoy and the complainant walked ahead? A Yes, sir; they walked ahead; they got about ten feet ahead of us, and they met this Central Office man.

Q Is that the second time they met the Central office man?
him--

A That is the first time they met this Central Office man had been talking with Linn inside in the court.

Q You are talking about the second time -- the first time nothing was said about any money between you and Ellis?

A No, sir.

Q Now we come to the second time. Did you again meet the Central Office? A I did not meet the Central officer the first time.

Q Was it the second time? A No, sir.

Q Well, what time was it? A It was the third time as we were going through the hall after I had been before the Magistrate twice.

Q At the second time did you meet any Central Officer?

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A He was around the door of the Court.


Q How did you know that officer? A He had a gold badge on like this officer over here has.

Q That is all you know about his being a central officer?

A When he came down to the door to make the arrest of this defendant, Ellis, the other officer said he was a central officer.

Q That is how you knew about him? A In fact I knew he was a police officer from having the gold badge.

Q At the time McAvoy and him walked ahead? A Yes, sir.

Q You and Scheckman stayed behind? A Well, we walked slowly and they had got about ten feet ahead of us; McAvoy and Linn met this Central Officer and McAvoy turned around and looked at us this way (illustrating). 

Q That Central Office man was met three times? A I am talking of the second time -- the second time we didn't need him, we passed him at the door.

Q Leave the Central Officer out of this affair and tell me whether McAvoy and Linn walked ahead without meeting the Central office man? A I am speaking about the third time, the time we went through the hall.

Q Speak about the second time? A The second time we all four walked together, which went ahead or behind, I could not really tell.

Q You don't know whether McAvoy was with you? A They

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stepped behind me or stepped in front of me; there wasn't room for four abreast in the hall.

Q That you are certain of? A I am not certain but I know he was close by/^{because}we walked as close as we could in the hall.

Q He may have been with Linn in front? A Yes, sir.

Q And you behind with Ellis? A It may have been.

Q Did you have the conversation with Ellis, the second time? A No, sir.

Q Not a word said between you and him? A No, sir, no word the second time.

Q When you came to the complaint clerk what took place then? A We came to the complaint clerk and Mr. Linn and Ellis conversed with the complaint clerk -- what that conversation was with the complaint clerk --

Q Did you hear the conversation? A No, sir; I did not hear that conversation but I heard what the complaint clerk asked he said, "Young man if you don't stop intimidating this witness I will have you taken before the judge."

Q Is that the second time the complaint clerk said that? A Yes, sir.

Q Twice? A The complaint clerk didn't say it the second time -- it was the second time we went back.

Q I am now at the second time you were before the complaint clerk? A Yes, sir.

Q When you say it was said?

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A This man was not there the first time.

Q Ellis wasn't there? A It was Linn that was making the complaint the first time.

Q Where was Ellis the first time? A He was not at the complaint clerk's desk; he was back.

Q Do you know where he was? A In the room somewhere.

Q You don't know where? A Right by me in the room.

Q He didn't take any part in it? A No, not the first time.

Q Then it was only the second time that he urged this man to make the complaint? A Yes, sir.

Q Then you turned around again, all four? A Yes, sir; all four went back before the Magistrate.

Q Where were you at the time with McAvoy? A Right beside him, we were standing in a file, I was right next, by him.

Q You walked through that long hall and before the Judge again? A Yes, sir.

Q What took place before the judge? A The second time Linn refused -- that was the second time when the complaint clerk got mad with this fellow and so he went back and Mr. Linn refused again and the judge asked Mr. Ellis if he would make a complaint and he said, "Yes".

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Q Then you walked again? A Yes, sir.

Q This was the third time? A Yes, sir.

Q Then Ellis spoke to you? A Yes, sir.

Q Where was the officer at that time? A The officer, when Ellis first spoke to me, was about a step or a step and a half ahead of me, just as we go through the hall.

Q A step or a step and a half ahead of you? A Probably ten feet; I slacked up.

Q So he could hear what was said? A Yes, sir; he turned around and looked right at us.

Q Did he stand to look at you? A Yes, sir.

Q Where did he stand? A He stood up against the wall in that hallway, just had his shoulder against the wall, looked right back at us.

Q Where was Linn? A Linn was walking towards us, he walked past us with the Central Office man.

Q Didn't Linn stand at the window smoking? A After he stopped talking with the Central office man he was smoking a cigarette.

Q Where was McAvoy? A He was right with his shoulder up against the door of the complaint clerk's office.

Q Seeing you talk to Ellis? A Yes, sir.

Q Very earnestly? A No, sir; not very earnestly -- he said to me "Cabby you are in bad".

Q Never mind; I didn't come to that yet. The officer

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saw you talk to Ellis? A Yes, sir.

Q You had quite an earnest conversation? A No, sir.

Q Not at all? A After he said --
long

Q Now, did you have a conversation? A No, sir.

Q How many minutes did the conversation last? A Probably a minute and a half, just as long as he took to say the words that I told you and all I said was "Not damned cent".

Q You said nothing at all? A Nothing at all only that one sentence.

Q McAvoy didn't come up to you at all? A No, sir, and McAvoy beckoned to us.

Q He stood there so he couldn't hear what was said between you? A He might have heard if I spoke loud enough.

Q You spoke loud enough so he could hear? A If we spoke loud he was in hearing distance; I didn't speak only one sentence. This young man spoke low, just so I could hear.

Q Was McAvoy so that he could hear what you said?

A No, sir.

Q Now, was that the time when you gave him the \$20?

A No, sir.

Q After you had the conversation about your being in bad and he demanding \$200 what did Ellis say when you said you would not pay him \$200? A He did not demand \$200 during that conversation.

Q What did he say about \$200? A It was after I spoke to

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the officer that he mentioned the sum of \$200.

Q Then what he did mention -- he told you that you were in bad and that you ought to settle or something of the kind?

A That I ought to give him some money.

Q That you ought to give him some money? A Yes, sir.

Q You went and spoke to McAvoy? A Yes, sir, soon after-- I didn't think of it.

Q How soon after that? A Well, probably three or four minutes.

Q Where was McAvoy when you spoke to him? A He was in line, waiting his turn at the complaint clerk's desk.

Q That was before the complaint clerk spoke to McAvoy?

A There were three or four men ahead of him waiting in line.

Q That were in line before the complaint clerk? A Yes, sir.

Q Where was Linn? A He was still back in the hall with the Central Office man.

Q And where was Scheckman? A Leaning with his elbow on the window in the hallway.

Q Not before the complaint clerk? A No, sir; he was smoking.

Q You had not agreed to pay Scheckman anything at that time? A No, sir.

Q Scheckman was the man who said he would make a complaint against you? A Yes, sir.

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Q Yet Scheckman was standing out in the hall? A Yes, sir.

Q Not before the complaint clerk? A No, sir; not before the complaint clerk.

Q You did not go before the complaint clerk at all at that time? A No, sir; not at that time.

Q Now, after you had spoken to the officer did you go out into the hall to see Scheckman again? A Not right away, perhaps a minute or so; I waited a minute or so.

Q All that time Scheckman was there? A Yes, sir, he was there with his elbow on the window smoking a cigarette.

Q You had a conversation with Scheckman? A I was talking; I told him I considered the matter and asked him how much he wanted.

Q You were willing to give him something? A I asked him how much he wanted.

Q \$50? A Two hundred he wanted first.

Q Two hundred? A I told him I couldn't think of such an amount.

Q He said he would be satisfied with fifty? A I asked him how much he would take and he said "Could you get fifty?" And I said "I will try and get fifty".

Q Was that at the time you gave him the twenty? A Yes, sir, right then and there after I came to the agreement on the fifty.

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Q Where did you take the twenty from? A My pants pocket, right hand pants pocket.

Q Do you remember that at the last time you testified that you had marked the \$20? A Yes, sir.

Q And it was found afterwards that they were not marked? A Well, that is right, as I supposed.

Q Now, you say -- A I took a little pencil out of my vest pocket and put the pencil down right standing beside Scheckman, put it into my pants pocket for to make a mark like that, in my pocket, thinking I put a cross on the corner but when we came to look for it, I could not find the cross of the pencil; I didn't have time to see whether it sharpened or not.

Q Do you remember that you came to the pencil story and your attempt to mark only after I had called your attention to the fact that these bills were not marked at all.

MR. WELLMAN: I object to that. It assumes a state of facts, which absolutely are not so and are not in the case.

THE COURT: Has he not a right to assume facts that are not so? Hasn't he the right to lead the witness into a pitfall if he can?

MR. WELLMAN: I understand that where counsel wishes to cross examine on a question or matter concerning testimony in a previous trial that he must face him with the

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minutes. Now, this simply is not the fact.

THE COURT: I think he may face him with anybody who heard the testimony.

MR. WELLMAN: This is assuming something which was not testified to at the other trial.

(Question repeated).

THE COURT: You are asking for the opinion of the witness rather than for the fact. I will sustain the objection.

MR. GOLDZIER: I will withdraw the question and I will reframe it.

BY MR. GOLZIER:

Q Isn't it a fact that the last time you said, in the first instance, that you had marked this twenty dollars? A Yes, sir; I still maintain it.

Q Now, wait a minute. You still maintain that you marked them? A As I thought; I had the pencil in my hand and I --

Q You claim that these bills are marked or that they are not marked? A They may be marked, I cannot find the mark.

Q Can anybody else find the mark? A I don't know; I know I can't. I laid the pencil over this here part and drew a cross on it with my right hand. The pencil may have been broken; or might not have been sharpened.

Q After I had called your attention at the other trial to the fact that the bills were not marked, then you said that

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you had taken out the pencil and had attempted to mark them, is that so? A That is what I did.

Q And that is what you say? A That is all with one hand. That is the fact, I thought I done it.

Q Now, after having given him the \$20 where did you go to? A Soon after I went to the officer, probably a minute or so after.

Q Did you stand by Ellis after you had given him the \$20? A I kind of sauntered away, a little bit from him, gradually, and when I got the chance, I sneaked over to the officer.

Q You had a conversation with the officer. Never mind about the conversation. You spoke to the officer? A Yes, sir.

Q Now, after that did you see Ellis again? A Well, probably in the period of a minute or less, as soon as I spoke one or two words to the officer, I came to the window, I was at the side of Ellis.

Q Where was Ellis? A Still at this window.

Q Where was Officer McAvoy? A Officer McAvoy still in line waiting for his turn at the complaint clerk's desk.

Q Will you state where this man Ellis stood and where the officer stood? A Now here is the window I suppose where Ellis was and he had his elbow in this window looking down this way towards Linn and Linn was with the Central officer

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here (indicating) and Ellis was looking this way towards him about this line (indicating).

Q Were they lined up? A Here is where the complaint clerk stood and the officer was waiting his turn in this line of men here (indicating); waiting his turn to come to the complaint clerk's desk.

Q This distance is about thirty-six feet? A I could not say.

Q Well, quite a distance? A Yea, sir.

Q In the same room? A In the room leading from this hall.

Q In the hall, isn't it? A The officer was in the room and Ellis was in the hall.

Q Ellis was in the hall? A Yea, sir.

Q Is that the time when you paid him the \$30? A No, sir.

Q When and where did you pay him the thirty? A I paid him the thirty up near the Magistrate's door, right near the door of the court.

Q Where was the officer when you paid him the thirty?
A Down about ten feet down where McAvoy was. Here is where I paid him the thirty up here (indicating).

Q Who was present when you paid him that? A Back here so far was McAvoy (indicating).

Q How far? A About within eight or ten feet, coming

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toward us.

Q This \$30 was paid in the presence of McAvoy? A I don't know that, I don't know as he seen it.

Q It was paid in the presence of McAvoy? A McAvoy was in the hall.

Q Was it or wasn't it paid in the presence of McAvoy?

A I don't think he seen the money; he might have seen me pass my hand to him; he may not have seen the money.

Q Now, I will call your attention to the affidavit that you made and see what you said. Is this the affidavit which you made before the Magistrate upon which this complaint was made against Ellis. Look at your signature? A Yes, sir, this is my signature.

Q Now, I will call your attention to what you swore to there "That the defendant thereafter compromised and reduced his demand to the sum of \$50, and thereupon, in the presence of one Thomas J. Gartland and Martin Slattery, one Patrick Corrigan marked two ten dollar bills and one five dollar bill and adding a five dollar bill not marked, and handed over said sum of money to deponent, that the latter, in the presence of Officer McAvoy, did hand over and deliver to said defendant the said sum of money"; is that true? A Officer McAvoy was in the hall.

Q Is that true that that was done in the presence of McAvoy? A Take what construction you want to put on it. Off-

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cer McAvoy was in the hall.

Q Was what you swore to here true? A Well, McAvoy was ten feet away from me, looking right at me, whether he seen me I don't know.

Q Was the money handed over in McAvoy's presence to the defendant? A Yes, sir; he was looking and he could see me, he was only ten feet away with no obstruction.

Q Now, after that transaction of the handing over of the \$30 had been performed you went again before the Magistrate?

A Yes, sir.

Q Now, what took place there? A Mr. Linn said he would not prosecute and the Magistrate said I thought you were to draw up this complaint.

Q To whom? A To Ellis. Ellis said "I don't think I should interest myself in the matter, I am not the loser, if you don't want to prosecute I won't be the boobin this case".

Q Well, what then? A Why the Magistrate sent Mr. Linn Back to the complaint clerk to draw up what he called a short affidavit, I believe that is what he said, and that was drawn up and Mr. Linn was sworn to it then we were all sent out of the courtroom. I was discharged.

Q Did nothing else take place before the Magistrate?

A The Magistrate asked him when he refused to make the complaint, "Has this thing been settled, did you come to a settlement?" And Linn said "No". "Have you made any settlement".

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"No."

Q Ellis or Schockman said nothing? A No, sir, nothing.

Q Now, you remember that you had a conversation with Mr. Linn at one time? A Yes, sir.

Q When was that, the first time the second time or the third time when you went through that hallway. A The first time we went through the hall I told Mr. Linn that it was a shame to prosecute a man like me, I was the father of a big family, had never committed a crime of that kind in my life. "Well," he says, "I don't want to prosecute you", and he did not.

Q He didn't want to? A No, sir.

Q How long did that conversation last between you and Linn? A Probably a minute. Just as long as it took me to say those few words.

Q You and Linn came up in the same patrol wagon? A I believe so.

Q You were the only persons in the patrol wagon? A My impression of it is there were several others in there; there were two officers in there.

Q Are you sure there were other parties? A No, sir.

Q Prisoners? A No, sir.

Q Didn't you have a conversation with Linn in the patrol wagon? A No, sir; I never spoke to him.

Q Didn't you say good morning to him? A No, sir.

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Q The first conversation was that when you told him that you were the father of children, that he ought not to prosecute you or anything of that kind? A I spoke to him in the detention pen before we were arraigned.

Q You had a conversation with him in the detention pen?

A I asked him if he had ever seen me before, if he could identify me and he said no.

Q Anything else said between you after that? A That is all.

Q Did he at that time tell you what he had lost? A No.

Q What property he had lost? A No, sir.

WILLIAM McAWOY, a witness for the people being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WELLMAN:

(The witness states he is attached to the 26th Precinct).

Q You were a patrolman attached to the 26th Precinct on November 29, 1911? A Yes, sir.

Q Where were you that night where was your beat? A On Seventh Avenue, 45th Street to 49th.

Q Was your attention at any time called to the defendant in 47th Street between Sixth and Seventh Avenues? A Yes, sir.

Q About what time? A About 2:35.

Q Where did you go? A I was standing on Seventh Avenue between 47th Street and 48th Street, when I heard cries of police.

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Q Now, can you keep your voice up a little louder?

A I ran to the corner of Seventh Avenue and 47th Street, and just about 50 feet east of Seventh Avenue, I saw Benjamin Lin lying on the ground and the defendant helping him to his feet.

Q Just for the purpose of the record. Was that in New York County? A Yes, sir.

Q Go ahead? A I asked the defendant "What is the matter?" "Why" he says, "this fellow is after being taken out of the cab and beat up, thrown on the ground." He said, "It is a shame to let him get away". I says, "Who done it?" And with that he says "That cab going up the street". At that time there was a cab going through 47th Street towards Sixth Avenue.

Q Where was the cab when you first laid eyes on it?

A About 100 or 150 feet, going east.

Q Whereabouts on the block, how near Sixth Avenue? A Way up near Sixth Avenue, pretty near Sixth Avenue.

Q You were 50 feet east of Seventh Avenue? A Yes, sir.

Q How long is the block between Sixth and Seventh Avenues? A About three or four hundred feet, a big block.

Q One of those double blocks? A Yes, sir.

Q The carriage you say was at Sixth Avenue? A Yes, sir.

Q Which way did it turn? A It turned south on Sixth Avenue.

Q Was it going fast? A pretty fast.

Q All right. Now, what did you do? A Well, I seen the

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driver and somebody else stood alongside of him.

Q Just a minute. What did you do? A I ran to the corner and there I saw a cab standing there and I looked down Seventh Avenue -- or Sixth Avenue.

Q Standing where? A The southwest corner.

Q Outside of a saloon there? A Yes, sir, 47th Street and Sixth Avenue. I saw -- I didn't see any other cab on Sixth Avenue so I picked this Lynch out. There was another fellow talking to him, the fellow was leaning on the hub of the wheel speaking to him.

MR. GOLDZIER: I object to that.

THE WITNESS: (Continuing) So I told -- I got on the cab and told Lynch to drive back through 47th Street and I told this young fellow with this light rain coat to come back, too.

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Q The man he was talking to? A Yes, sir. When we got back to 47th street Linn was standing up and they were brushing-- he was standing up and Ellis was brushing the mud off his clothes. I asked him if he could identify the cabman and he said no. So I looked at Ellis and I says, "Is this the fellow", and he said, "Yes". I says, "Do you know this other fellow", with that this fellow with the light raincoat came and over and he said, "No, I didn't see him". So I says, "Sure that is the fellow", and he said, "Yes". Well, I said to Linn, "Do you want to make a complaint against him". Well, Linn was intoxicated and he didn't know whether he wanted to or not.

MR. GOLDZIER: I object to that. I asked for the words that Linn used.

THE WITNESS: He said he didn't want to make a complaint. I put the two of them into the cab, both Linn and Ellis and I told Lynch to drive over to 47th street, which is two blocks away from Seventh avenue. We started over west on 47th street and when we got about ten feet the door opened and I saw Linn jump out and going sprawling in the gutter again. Ellis got out in the meantime and I says, "What is the matter. Don't you want to make any complaint against this fellow", and he said, "No". I says, "You are going to make a complaint and I will lock you up". I put him back in the cab. Before that when

he said he didn't want to make any complaint I was going to let him go, but I turned around to Ellis, and I says,

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"Sure of this fellow"? He said, "Yes". I says, "Well, how do you know", and he says, "There is an overcoat in that cab". I went over to the cab which was standing about 15 feet away from me, put my hand into the bottom, saw the raincoat, picked it up and looked at it, it was black, I threw it back and I says, "This is the fellow. You two fellows get in there, we will go to the house". We drove over to the station house and there I entered a complaint of intoxication against Linn and assault against Lynch. This defendant then came over and he was telling how Linn was dropped out of his cab, punched and kicked and then thrown on the ground. So I advised the defendant then to come over to court which was in West 54th street near Eighth avenue and he said he would in the morning. Then he says he was afraid to go back through 47th street that some of the cabmen would lick him and the lieutenant assigned a man to go over and take him over as far as the hotel. The next morning in court I brought Linn and Lynch up in the patrol wagon; there was another officer there.

Q. When you were before the desk lieutenant did Ellis say anything, the defendant? A. Why he said how he seen the fellow getting attacked out of the cab and beaten, that is all.

Q. Now, in the Magistrate's Court? A. In the Magistrate's Court first I went in and made a short affidavit of intoxication against Linn and I arraigned him in front of the Magistrate and Magistrate Herman discharged Linn. I went back and brought

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Lynch from the pen and brought him out through the hall, around in front of the Magistrate's desk into the complain clerk's room. Linn was there and he wouldn't make -- arraigned him before the desk and I said, "This is assault", to the clerk, and the clerk started to make out the affidavit and when he got half-way through this fellow Linn said he wasn't going to make it out. So we went on and I took him back in front of the Magistrate. So we got in front of the Magistrate and the Magistrate said, "What is the matter with this". I explained the case to him, told him how they were a witness to it and I called Ellis at that time, arraigned him before the Magistrate, and brought him before the Magistrate. I explained that to the Magistrate and the Magistrate then inquired why he didn't want to make this complaint, and he said he wasn't sure of the men. So the Magistrate says, "Did you see this", talking to Ellis, and Ellis said, "Yes". He says, "What did you see?" "Why", he says, "I seen this man pull him out of the cab, beat him, throw him on the ground, and put his hand in his pocket and take the money". The Magistrate said, "You seen that?" He said, "Yes". He says, "Officer, you take him back", he says, "make a complaint of assault and robbery". I brought him back to the desk, to the clerk's desk, and we had to wait there a few minutes before we could get to the desk. We got to the desk. I explained the case to the clerk and the clerk was writing out a paper of assault and robbery, and when he had the paper about half completed Linn again refused to make the complaint and I said,

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"Don't you want to make a complaint?" He said, "No". He said he wasn't sure of the man and he wasn't going to make a complaint. I brought him in front of Magistrate Herman again.

Q Did Ellis say anything at that time at the clerk's desk? A He was butting in on this complaint.

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

MR. WELLMAN: Yes.

Q Just tell us what the defendant said. Did he say anything to Linn? A He was telling Linn he was a fool to let this thing stop.

Q Did you hear the clerk say anything? A Yes, sir; the clerk told him he has got to stop talking in this case, there is a complainant in it, he is not the complainant, he is only a witness. We then went in front of Magistrate Herman again and the Magistrate wanted to know why he didn't want to make a complaint and he told the Magistrate he wasn't sure of the man, and the Magistrate then turned towards Ellis and he says, "You seen this, didn't you", and he says, "Yes". "Well", he says, "you make a complaint". "All right", volunteered Ellis.

MR. GOLDZIER: I object to that.

THE WITNESS: (Continuing) He says, "All right". With that we went to this complaint clerk again and we had to wait there well, about ten or fifteen minutes before we could get to the railing again. While standing at the railing Lybch

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then came over to me and he said--

MR. GOLDZIER: I object to that conversation between
Lynch and the officer.

THE COURT: Yes.

BY MR. WELLMAN:

Q Now, Officer, you had a conversation with Lynch?

A Yes, sir.

Q What did he do after that? A Why, he walked away
a few feet from me.

Q Did you see where he went? A No, sir; I did not.

Q Where was Ellis at that time, Officer? A Right in
the hall, we went not in the complaint clerk's room then,
there is a special there, but there is no door there.

Q He walked away? A Yes, sir; he walked away.

Q Did he come back to you? A Well, we brought him ba--
then we went to the complaint clerk's desk and there Ellis
says, he says, "I don't see why I should be the boob in this
case, I didn't lose anything".

Q Well, did Lynch come back again? A Yes, in about
three or four minutes.

Q He did? A Yes, sir.

Q Did you have a conversation with him then about the
defendant? A Yes, sir; we did.

Q You spoke to him, did you? A Yes, sir. We went before
the complaint clerk and the complaint clerk was writing out the
complaint when this fellow said he wasn't going to sign the

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complaint. Ellis said he was not going to sign the complaint; he said he did not lose nothing.

Q Now, Officer, that happened after you had your conversation with Lynch? A Yes, sir.

Q He had gone away and come back? A Yes, sir.

Q And had a second conversation and went away again?
A Yes, sir; he walked out again about to the threshold of the furthest end of the hall leading to the Magistrate's room or the courtroom proper, and we stood there, about, I guess, ten minutes almost or fifteen minutes and there Lynch and I had another conversation.

Q Where did you go then or who did you speak to? A I spoke to Lynch.

Q Did you speak to the clerk of the court? A Yes, sir; I walked out and spoke to the clerk of the court.

Q What did you say to him?

MR. GOLDZIER: I object to that.

Q You went to the clerk? A Yes, sir.

Q Not the complaint clerk? A No, sir; the clerk of the court.

Q Where the Judge is? A Yes, sir.

Q Did you see the complaint clerk do anything? A Yes, sir; he went over and spoke to the Magistrate.

Q Go ahead? A And then I arraigned him before the Magistrate and explained that neither one of them would make a complaint and the Magistrate wanted to know why it was and Ellis

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7 said that he did not lose anything and that this fellow don't want to -- meaning Lynch -- don't want to make a complaint-- he don't see why he should. The Magistrate then asked me to bring them back and have Lynch to sign -- or Linn to sign a short affidavit.

Q Now, before that when you were before the Magistrate did the Magistrate say anything to Linn? A Yea, sir; the Magistrate wanted to know if they formed any settlement and Linn said he had not.

Q Did the defendant say anything then? A No, sir; I don't think he did.

Q Where was he? A He was standing alongside of me, the defendant Ellis, Lynch on this side of me and Ellis or Linn on the other side of me, just in front of the Magistrate's desk. We walked back then and made a short affidavit, Linn signed it, we walked through the hall, came back again in front of the Magistrate and the Magistrate discharged Lynch.

Q I want to get clearly that situation. When Ellis told the Magistrate that he was not the loser and that if Linn did not want to prosecute he had no interest to prosecute -- now, what did the Magistrate then say. Can you remember what he said?

A Why, the Magistrate just asked Linn--

Q Tell us about what he asked him? A He said, "Did you form--"

Q Did he whisper to him or how did he ask him? A No, sir; he spoke openly; he asked him if he had formed any agreement

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between them.

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Q Yes. A And Linn said, "No, he had not".

Q Where were they standing then? A Right directly in front of the desk like right here (Illustrating).

Q Ellis was standing in front of the desk too? A Yes, sir.

Q Lynch was discharged by the Magistrate? A Yes, sir.

Q You went out? A Yes, sir; when we got this discharge from the Magistrate we walked out alongside of Ellis, Lynch and Linn behind. We walked downstairs and out into the street. As we did, right on the sidewalk, I had hold of Linn's arm all the time going out -- Ellis' arm, and I said to him, "Where is that \$50"? He said, "What \$50". I says, "You know what \$50." He says, "Are you kidding me". I says, "No, I am not kidding you, hand it over". With that the defendant put his hand in his overcoat pocket and drew out two tens and the thirty dollars which were handed to him upstairs.

Q What is that? A Which was given to him upstairs. I brought him back in front of the Magistrate and we went to the complaint clerk's desk and made out an affidavit of extortion.

Q Did Lynch and all of you tell the story before the Magistrate? A Yes, sir.

Q Just as you told it here?

MR. GOLDZIER: I object to that.

THE COURT: Objection sustained.

Q Will you examine these bills which I show you, first

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these two, and see if you can identify them? A Yes, sir;
I put that mark D.B. five.

Q What does that stand for? A That means the detective
that was standing in the hall.

Q What was his name? A That is his shield number,
James Bresnan.

Q You marked these two. Do you find any other marks on
them? A No, sir.

Q Now, these other bills which I might designate for the
purpose of the record as two tens? A This ~~xxx~~ one is marked C.

Q One marked with a C? A Yes, sir.

Q Did you see that before? A Yes, sir.

Q Where did you see it? A Why, that morning in court.
This one is marked with P.

Q Did you see that at the same time? A Yes, sir.

Q A ten dollar bill with a P on? A Yes, sir.

Q And this one with an E on it? A Yes, sir.

Q A five dollar bill? A Yes, sir;

And this one isn't marked at all.

Q This one is not marked at all? A No, sir.

Q Now, were all these bills the bills which you took
and which the defendant handed you? A Yes, sir.

Q From his pocket? A Yes, msir.

(The bills referred to are marked in evidence without
objection as People's Exhibit 3.)

Q Officer, did you see any of this money passed? A No,

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sir; I did not see it passed.

Q Just tell us what you did see? A Why, I was standing in the doorway and I did see Linn -- Ellis and Lynch standing close to one another right at the doorway.

Q I mean the second time, Officer? A That is the second time.

Q You saw them standing there? A Yes, sir.

Q Did you see anything handed out? A No, sir.

Q You don't know whether it was money or not? A No, sir; I do not.

Q You couldn't say that? A No, sir.

Q One question more. Now, Officer, about that hallway there in the courtroom, as I understand it, the pen is on this side? A Yes, sir.

Q Where the prisoners were kept? A Yes, sir.

Q Now, when you get around here, tell me whether this part is fenced in in front of this place? A There is a big railing there.

Q And a fence right across it? A Yes, sir.

Q How high? A Well, about six or eight feet above the railing, there is a railing right through there (indicating).

Q There is a door there, isn't there? A A gate and a man standing there.

Q An officer standing at that gate? A Yes, sir.

Q You came out here and there is a door there? A Yes, sir.

Q Is that right? A Yes, sir.

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Q Was that door opened or closed? A Locked.

CROSS EXAMINATION BY MR. GOLDZIER:

Q From the time that you came into court that morning until Lynch was discharged he was your prisoner, wasn't he? A Yes, sir; he was.

Q Now, when you went out the first time from the courtroom to the complaint clerk's office you did not walk with Lynch?

A The first time?

Q Yes. A Oh, yes.

Q Right by his side? A yes, sir; oh, yes.

Q Where was Linn walking? A Right behind me.

Q Right behind you? A Yes, sir.

Q Where was Ellis? A Ellis he was walking behind too.

Q Then the first time that you walked from the courtroom to this long hall -- it a long hall? A Yes, sir; it is.

Q You had this man Lynch in charge? A Yes, sir.

Q Walking beside him? A Yes, sir.

Q Now, when you walked back to the courtroom again did you walk with this man Lynch? A I did.

Q All the time? A Yes, sir; all the time, the first time, yes, sir.

Q Where was Linn? A Walking behind.

Q And Ellis? A Walking behind, in the rear.

Q Now, when you went out again from the courtroom to the complaint clerk's room, did you have Lynch in charge then?

A Yes, sir; I had him in charge.

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Q Were you walking with him? A No, sir; not exactly alongside of him going through the hall.

Q Was he behind you? A He was in front of me, I believe, the second time that we went in.

Q Now, don't you know that you were walking with Linn in front and Ellis and Lynch were behind? A No, sir.

Q Isn't that so? A I had Lynch, urging him, trying to make him make a complaint against this fellow.

Q Well, I want to know whether you were walking with Linn in front and your prisoner and Ellis was walking behind?

A Well, is that the second time?

Q The second time? A Yes, sir.

Q How far behind? A Probably about five feet.

Q Could you listen to the conversation that they had?

A No, sir; I don't know.

Q You knew that they had some conversation, Ellis and Lynch? A No, sir; I do not.

Q You do not know it? A No, sir; not the second time.

Q Now, you say you were trying to induce Lynch to make a complaint against this man? A Yes, sir.

Q What were you telling him about making a complaint against the man? A What was I telling him? Well, I was asking him why he was letting this fellow get away after he beat him.

Q Anything else? A That is about all.

Q Now, when you came to the complaint clerk, were you

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standing there with Linn? A Yes, sir; certainly.

Q Where was Lynch? A Right alongside of me before the complaint clerk.

Q Where was Ellis? A Right there.

Q Weren't they, Lynch and Ellis, speaking to each other?

A Lynch and Ellis? No, sir; not then.

Q At that time Linn refused to make the complaint?

A Yes, sir.

Q You walked back again? A Yes, sir.

Q This prisoner still in your charge? A Yes, sir.

Q And you beside him? A No, sir; I wont say beside him.

Q Well, in front of him? A Might have been in front and might have been in the rear, I dont exactly remember.

Q You with Linn? A I dont exactly remember just at that time.

Q That you dont know? A No, sir.

Q At that time Ellis and Lynch had a conversation?

A No, sir; it was not at that time.

Q You did not see them have the conversation? A No, sir.

Q You did not hear them have any conversation? A No, sir.

Q Now, then, you came before the Magistrate again?

A Yes, sir.

Q Was that at the time when Ellis was to make the complaint?

A Yes, sir.

Q The second time? A The third time.

Q How many times were you before the Magistrate?

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A Three times and for the discharge was four times.

Q Four times? A Yes, sir.

Q More than three times? A Yes, sir; I believe it was.

Q Now, the second time Linn refused to make a complaint?

A Yes, sir.

Q Was Ellis asked to make a complaint? A It was the third time -- and the second time we were there that was the third time he had made the affidavit.

Q The second time you were before the Magistrate before the Magistrate asked Ellis to make the complaint? A The second time, yes, sir.

Q Then you walked back, the four of you? A Yes, sir; to the hall.

Q You with Lynch? A Yes, sir; I was with Lynch.

Q All the time? A Yes, sir; all the time; I had him on my observation, I was watching him all the time.

Q You had your eyes on Lynch all the time? A Pretty near all the time he was in the hall.

Q You were anxious a complaint should be made against Lynch? A I was.

Q You knew Ellis was to make that complaint? A Yes, sir.

Q Did you see Ellis talk to Lynch? A No, sir; I did not.

Q You did not see it? A No, sir; I did not.

Q During the whole time? A No, sir; I did not.

Q You say during all that time Lynch was always under

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your observation? A Yes, sir.

Q You came before the clerk again, what occurred then?

A Well, why--

Q Before the complaint clerk? A When we did get to the complaint clerk it was quite a little while and then --

Q During that time was Lynch under your observation all the time? A Yes, sir; pretty near.

Q Did you see Ellis during that time? A Well, I didn't take much notice to Ellis during that time.

Q Did you see Lynch have a conversation with Ellis during that time? A He may have, but I don't know whether he did or not.

Q Lynch was under your view? A Yes, sir.

Q Do you know whether he conversed with some one?

A I could not -- not at that desk --

Q Could you see some one at the same time? A I had to keep my eyes on the desk to get a chance to get there.

Q Could you see Lynch and watch the desk? A I was trying to watch both at the same time.

Q You did not succeed very well? A No, sir; not very well.

Q So Lynch escaped your observation during some time?

A Yes, sir; he may have.

Q He may have done that? A Yes, sir.

Q While you had your mind and eyes on the desk? A Yes, sir.

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Q You hadn't your mind and eyes on your prisoner?

A No, sir; not very well.

Q Not very well? A No, sir; but for a minute or so.

Q Now, then, when you went up again, the next time, before the Magistrate, Ellis had already refused to make a complaint? A Yes, msir.

Q To the complaint clerk? A Yes, sir.

Q You said that he told you or told the complaint clerk that he wasn't the goat, he lost nothing, and he wasn't going to make any complaint? A yes, sir.

Q That you are sure of? A Yes, sir.

Q He told the same thing to the Magistrate? A Well, he explained it in a different way to the Magistrate than he did to the clerk.

Q What did he say to the Magistrate? A He said to the Magistrate that he hadn't lost anything, he didn't see why he should make this complaint.

Q Did he say he didn't see why he should be the goat?

A No, sir; not before the Magistrate; that was in front of the clerk.

Q Now, is it a fact that Linn during that time said to the Magistrate that Lynch did not assault him? A He said he was not sure he assaulted him.

Q Did he say that Lynch did not assault him? A He didn't know who assaulted him.

Q Well, I ask you again? A He didn't say whether he

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Q I asked you whether he said at any time that this man Lynch did not assault him? A Yes, sir; I think he did.

Q He did say that? A I think he did.

Q When did he say that, the first, second, third or fourth time? A The second time.

Q The second time? A Yes, sir.

Q Now, what did he say to the Magistrate about Lynch not assaulting him? A Well, when he refused to make or sign the affidavit the second time I brought him in front of the desk and the Magistrate wanted to know why he didn't want to sign, "Well", he said, "He wasn't sure of the man and therefore he wouldn't sign no affidavit".

Q Now, you said just now that he said that Lynch did not assault him? A Yes, sir.

Q Now, give me the words in which he said that Lynch did not assault him? A Why, he told the Judge that he was not sure and didn't think that man assaulted him; he didn't think the man assaulted him.

Q He said he didn't think Lynch assaulted him? A Yes, sir.

Q That was the second time? A Yes, sir.

Q Several times he had said he wasn't sure whether the man assaulted him? A yes, sir; he wasn't certain.

Q At that particular time he said he didn't think he assaulted him? A Yes, sir.

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Q That was after you had tried to have him make a complaint?

A Yes, sir.

Q Against this man? A Yes, sir.

Q You say that at the time when you went before the Magistrate the third time you saw Linn and Ellis -- or Lynch standing near the door of the courtroom? A Yes, sir.

Q Speaking to each other? A They were talking there.

Q They were talking? A Yes, sir.

Q All through there? A Yes, sir.

Q Did you say anything about Lynch to any one of them?

A No, sir; I did not say --

Q Was Lynch under your observation at that time?

A Well, yes, he was under my observation.

Q He was your prisoner? A Yes, sir.

Q Under your observation? A Yes, sir.
with

Q You did not interfere with any conversation that he had with the prisoners who were to be complainants? A No, sir; not when at that door, no, sir.

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

Q Now, did you see Ellis sign anything? A No, sir; I did not.

Q Well, did you see him write anything? A No, sir; I did not.

Q Ellis was right there? A Yes, sir; I know he was.

Q With the others? A Yes, sir.

Q What is that? A I know he was.

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Q He was under your observation during that time?

A Yes, sir.

Q You didn't see him write this receipt in evidence?

A No, sir; I was looking out at the Magistrate's desk, I was watching that because the four were right standing at the doorway.

Q You were watching the Magistrate's desk instead of watching your prisoner, is that it? A Yes, sir.

Q Is that it? A Yes, sir.

Q You thought that was more important, anyway you didn't think very much of this charge, did you? A No, sir; I did not

Q You did not? A No, sir.

Q From the beginning you did not? A No, sir; I did not.

MR. WELLMAN: Do you mean the charge against Lynch?

MR. GOLDZIER: Yes, sir.

Q Yet you tried to induce Linn to make a charge against this man? A Yes, sir.

Q Didn't you also tell Linn, as has been testified to, that somebody told him that this was the best way of getting back his property? A Who told him?

Q Did you tell him that? A I told him that if he had lost anything that this would be the only way he could get it by prosecuting this man.

Q That is, you told him? A Yes, sir.

Q Did he say anything to that suggestion? A Why, no, sir, he was never sure of that man.

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

DIRECT EXAMINATION BY MR. WELLMAN:

(The witness states he lives at 423 West 25th street).

Q Mr. Corrigan, you are a stableman, are you not?

A Yes, sir.

Q Where is your stable? A 336 to 338 West 25th street.

Q Is that a boarding and livery stable? A Yes, sir.

Q You know Michael Lynch, do you not? A Yes, sir.

Q Did he board his horses with you? A Yes, sir.

Q And carriages? A Yes, sir.

Q Were you in the Magistrate's Court on the 29th of November, 1911? A Yes, sir.

Q When Lynch was arraigned? A Yes, sir.

Q Do you remember at some time in the proceeding Lynch coming to you and holding a conversation with you? A Yes, sir.

Q About some money?

MR. GOLDZIER: I object to what the conversation was.

Q Holding a conversation? A He came to me---

Q You can't say what he said. Did he have a conversation with you at some stage of the proceeding? A Yes, sir.

Q Did you give him anything? A I gave him \$30.

Q Did you do anything with that \$30 before you gave it to him? A I went out to the toilet with two other men and marked three of the bills and one I did not mark.

Q One you did not mark? A No, sir.

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Q Which one didn't you mark. I will show you the bills.

A Well one five dollar bill I did not mark.

Q The jury can't hear you? A One five dollar bill I don't think I marked.

Q How is that? A I just through three was enough to mark.

Q Was that the one you put on the outside, the one that was not marked? A I couldn't say just how I placed them.

MR. GOLDZIER: We will concede that one is not marked and that the other three are marked.

MR. WELLMAN: All right.

Q You identify these, do you? A Yes, sir.

Q The bills marked C, P and E? A Yes.

Q How long did Lynch board his horses with you? A About twelve years..

CROSS EXAMINATION BY MR. GOLDZIER:

Q Now, do you recognize the place here where you were when you saw Lynch? A (Witness indicates on the map) Right here.

Q In the courtroom here? A Yes, sir.

Q Did you see Lynch at the railing here? A Yes, sir.

Q Did you go inside that room or outside? A Just to the edge of the railing.

Q The edge of the railing? A Yes, sir.

Q Did you see McAvoy anywhere around at that time?

A I seen him out in the court before that.

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Q At that time did you see him around? A No, sir; not at that time, that was right at the door, coming out of the court.

MR. WELLMAN: The people rest.

MR. GOLDZIER: Now, may it please the Court, I move that the first count be taken from the jury on the ground that the Magistrate has no jurisdiction either to issue a subpoena because there was no written information before him. I have cited the authority.

THE COURT: I have read your memorandum on that and I am against you on that contention. The case was before him. The information was for the purpose of getting the defendant into court and the defendant was brought in and the case was before the Magistrate. I think we are bound to assume it was properly before him and that the indictment is sufficient on that point. You may, of course, have the benefit of an exception to my ruling.

MR. GOLDZIER: Certainly, I take an exception.

MR. WELLMAN: I ask that your Honor take from the jury the second count charging the defendant with the crime of compounding a felony upon the ground that there is no evidence that there was a felony to compound. I would ask your Honor to send the case to the jury upon the first and third counts, bribery and attempted extortion.

MR. GOLDZIER: Well, now, I take an exception to the ruling and to your Honor not taking from the jury

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the first count. I now ask that the third count be taken
from the jury on the ground that the charge having already
been made of a crime all that could have been done for
the money was the withdrawal of that charge. There
was no fear and there could be no fear of a charge which
had already been made.

THE COURT: I am against you on that contention.

MR. GOLDZIER: Exception.

(Mr. Goldzier opens the case on behalf of the defendant)

D E F E N S E.

MURRAY SCHECKMAN, the defendant, being duly
sworn and examined as a witness in his own behalf,
testified as follows:

(The witness states that he lives at 1407 Wilkens avenue,
Bronx.)

DIRECT EXAMINATION BY MR. GOLDZIER:

Q How old are you? A Twentyone.

Q You are married? A Yes, sir.

Q Do you remember the occurrence of November, 1911,
that has been testified to here? A Yes, sir.

Q What did you see first about this occurrence of a man
being assaulted, if anything? A Well, at that time I was
living at the King Edward, 47th street between Broadway and
Sixth avenue. I was rehearsing at that time for a vaudeville
show with two other boys and we were to play over in Brooklyn
at that time-- I played the piano. I happened to get home late

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that morning, about 1:30, I walked up to 48th street, bought a newspaper, the morning papers were out, walking back there was a crowd collected about two doors below 47th street, off Broadway, and Seventh avenue, on the other side of Broadway and 47th street, about thirty people standing there with a cab driver in the center. I walked over, naturally, my -- I was as inquisitive as the rest. There was an argument, between the cab driver and Linn. Linn appeared intoxicated and the cab driver was demanding two dollars from Linn, the fare which he claimed. Linn said, "Why, you have got me here at 50th street and you drove me three blocks and demand two dollars. The understanding between us was for you to drive me to the Breslin Hotel, which is at 29th street and for me to pay you two dollars". He says, "Welll", he says, "are you going to pay me the two dollars now". He says, "I will do nothing of the kind". He says, "You call an officer and if the officer directs me to pay you the two dollars, I will pay it". Lynch says, "No, I will call no officer, I will be the officer in this case". With that he pulled his coat off his back, he had a black coat, he threw it into the cab, and he started to beat up Linn unmercifully, grabbed him by the neck, threw him on the sidewalk against the railing that is on the corner of 47th street and Broadway, kicked him in the stomach and in the neck and I butted in and says, "Why don't you call a policeman and don't hit the fellow that way". He says, "You mind your own business". With that he stuck his hand in Linn's pocket and pulled out some money and

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he says, "I have got it now", jumped upon his cab and started to drive away. During all this time there was no policeman in sight. As he jumped on his cab Policeman McAvoy came along and says, "What is the matter here". I seen the fellow going down on the cab, get him. He sounded his club and started to ran after him. Linn was laying there, nearly unconscious, I walked over to him, picked him up and I says, "Are you hurt, old man"? And he says, "Just a bit", he says, "I am more dazed, I can't see." I says, "Hold on to my shoulder, I will help you." I took him around the neck and lifted him up. We walked down the street and I said the officer will get this cab driver, what did he take from you. He says, "I had \$20 in my pocket, a gold watch and chain, I had a stick pin and a chain and a ring", and I says, "Well, you can take it from me he won't get away with it. I will stick with you". We walked to about the middle of the block and just as we got to the middle of the block the officer comes up with the cab driver and the officer says to Linn, "Is this the fellow", and Lin says, "Well, I will tell you, Officer", he says, "I can't see straight and I couldn't tell if -- I couldn't tell if I saw him probably ten more times", he says, I don't know what I was doing, I am all dazed now". I had Linn by the arm, supporting him, he could not stand, and the officer said to me, "Did you see this thing", and I told him, I said, "Yes, I saw the whole thing from the argument until the punishment he got". "Well", he says, "is this the fellow"? I says, "I will tell you, officer, "I won't

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swear that he is but the cab driver that beat up Linn had a mustache and a slouch hat on" and sure enough this cab driver had a slouch hat on and a mustache and it was Linn, and then Lynch spoke up and said, "Young fellow, ain't you making a mistake"? And I says, "No, Officer, I am not". And I said, "Yes, I can tell him by his voice", and I says, "Well, Officer, look in the cab and if you find a black coat in there I am sure this is the man because when he went to hit Linn he took his overcoat off and threw it in the cab. The officer looked inside and says, "I guess that's the fellow, come on". He jumped up on the cab and Linn and I were inside the cab and drove over to 47th street police station. We were taken before the captain and asked the charge, asked Linn whether he thought that was the man and Linn says, "I can't say", he says, "I was beaten up, I am drunk", he says, "I can't tell, I can't see". And the captain asked me what I was doing there and I told him I seen the whole affair and he says, "Well, what did you see", and I just told him what happened. I told him that Lynch had beaten and robbed him. The charge was put down on the blotter there,

and the captain asked me to appear the next morning at nine o'clock in 54th street court and he wrote the name on a card, the address on a slip of paper and gave it to me, and he even as much as complimented me by saying that, "Mr. Ellis, if there were more citizens like you in this city there would not be so many hold-ups and robberies. There may have been thirty people watching that accident", he says, "and not one would have appeared against this man". I thanked him for his compliment and he had a police officer escort me back to the hotel for fear that some of Lynch's gang might be outside to pounce upon me. The officer did take me back to the hotel, and it was about three o'clock at this time or 3:30.

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Q The next morning did you appear in court? A Well, I left a call with the clerk for the morning at 8 o'clock.

Q Did you appear in court? A Yes, sir.

Q Where did you sit or stand in the courtroom when you appeared? A I first came into court room about two minutes after nine, and I sat outside where the spectators all sat. No case had been called as yet when Officer McAvoy saw me and motioned me to come inside the gate. I walked in through the long hallway, that hall they were all talking about, and I met Linn, and Linn says to me, "Good morning, old man" he gave me his hand and he says "you are an ace, I didn't think you would stick to me, but gee, I feel pretty bad this morning, all banged up, biled up, and I says, "Don't you worry, Linn, you will get everything coming to you, I am going to stick to you", he says, "Well, I all appreciate it greatly" he says to me -- a few minutes afterwards he says, "Listen, you know Ellis, last night while in the coop over in 54th street, or rather 47th street, this fellow Lynch was talking to me and told me that he is a married man, had five children, and he pleaded with me, four or five children, he told me he had five children, was a married man, never been in a mixup before, and all this and that, and then he says to me, he says "you know I don't think I will press the charge against this fellow" he said, "all I want is my property or my money." I said, "Well, you are a foll", I says, "if you don't press the charge against

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this fellow. "You have got to do it now", he says "Well, I will talk to the Magistrate about it, and see what he says". I says, "That's perfectly right, he will tell you the same thing I tell you". He was brought before Magistrate Herman, and Linn tells Magistrate Herman he don't want to all prosecute him he wants is that which was taken from him, and the Magistrate told him words similar to mine.

Q What did the Magistrate tell him? A "Well, if you don't press the charge, and this man is discharged you have got nothing to do with it any more." So Linn says "Well, I will press the charge". As I understood it at that time, if he pressed the charge he has got to sign a paper --

Q Never mind what you understood. Proceed. A We walked back to the clerk's office at the end of the corridor, and when we get there the clerk is a little busy, I was talking with Linn all the time during that time. When we got to the clerk's office, got into the clerk's office, he said to me, he says, "I don't want to press the charge against the fellow, I am going out of town next week any way. I won't be able to appear against him, I want to get some money from him, the money he took from me, if I don't try to settle it with him" he says, "I get nothing." I says, "Well, you are a fool. If he got my money I would put that fellow away for the way he beat you if I was in your position, I wouldn't take any pity with him the way he beat

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you", and he says, "Well", he says, "I will go up to the ¹²⁶ Magistrate again", "All right". We went up again this time.

Q Who went up? A Linn and I.

Q Had you spoken to the clerk before that? A At that time?

Q Before you went up to the Magistrate? A No, sir, before we got to the clerk Linn said he didn't want to press the charge.

Q You went back again? A Yes, sir, back again to the Magistrate, and Linn tell the Magistrate again, Magistrate Herman, he does not want to press the charge, and Magistrate Herman says "Now, supposing you press the charge" talking to me". "Well", I says, "your Honor" I says, I am merely here as a witness, I am merely here to see that Mr. Linn gets justice because I knew last night that he was in no condition to testify this morning because he was drunk. Magistrate Herman says, "Well, I don't blame the young fellow", he says, "for not wanting to take an active part in this" he says, "it is up to you", and Linn says that he -- "Well," he says, "all right I will do it. Back we go to the clerk's office, and when we got to the clerk's office, the clerk's office was very busy, somebody in there, I don't know exactly who it was, told the man to sit down on the chair, and wait until his turn came. He sat on the chair, and I wanted to take a smoke. I walked out to the hall, and stood by the window smoking, stood there about two months and

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Lynch comes up to me and he says, "Hay Ellis," he says, "Linn don't want to press the charge against me", he says, "How much money does he want". I says, "Lynch", I says, "Don't talk to me, " I says, "I don't want to have anything to do with you, if you want to settle with him, you go right to see him." He says he is too busy. "It ain't my case, I wouldn't care who you were I would send you away. You ought to be ashamed of yourself to beat a fellow that way". He says "Well, it wasn't me". I says, "Now, don't tell me that it wasn't you."

The Court then admonished the jury calling their attention to Section 415 of the Code of Criminal procedure, and took a recess until a quarter after two o'clock.

AFTER RECESS.

MURRAY SCHECKMAN, the defendant resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. GOLDZIER:

Q Do you remember where you stopped in your conversation? A We had left the Magistrate's Court for the clerk's room the second time.

Q Go on with the conversation you had with him.

A When we got to the Clerk's office they were busy. The man inside asked Linn to sit down and wait until the man was ready to see him. Meantime he walked out of the clerk's office and smoked a cigarette at the window, and stood there for about a minute or two. Lynch came up to me and he says,

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"See here, Ellis", he says, "Linn don't want to press this charge against me", he says "How much money does he want?" I says, "I don't know anything about it Lynch", I says, "If I was Linn I would never accept any money from you the way you beat him up and rob him". Well, he started to tell me he had children and a family, and asked me, if I would not go in and ask him how much money he wanted." I says, "I will tell you, I will go in, and ask him not for your benefit, but for his, because I am looking out for his interests." "All right". I walked into the clerk's office, walked up to Linn, I said, "Linn, Lynch wants to settle with you, I suppose you better go out there and see him". He says, "No", he says, "I will stay here. The clerk is going to call me in two minutes, he told me to wait, I can't go out there, so ", he says, "You go and tell him that I want \$200." I says, "Well, all right I will go out there". I went out, and I says "Lynch, Linn wants \$200." He says, "Oh, I can't get no \$200, I am only a cab driver", he says, "and all I have got with me is \$20. " He says, "I will give him \$20, and when we leave the court room I will give him the other \$30." I says, "Wait a minute, I will go in and ask him". I went inside, and I said, "Linn, he has agree to give you \$50, \$20 now and \$30 when you leave the court." Linn says "Well, I might as well take \$50, that is better than nothing, the other way -- if I go the other way about it, I won't get anything. I might as well take

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the \$50." "Well," I says, "It is up to you", and he says, "You better go out and get it". He says "no the clerk is going to call me in a minute, he told me to wait, you go out" he says, "you have been a friend to me, so far ~~xx~~ I can trust you with fifty". Well, naturally, I went out and I says "Lynch, he is satisfied with fifty dollars", and he says, "Well, here is twenty". He gave me twenty dollars and I stuck it in my overcoat pocket, I had a small pocket, a pocket on the outside, as soon as he gives me the twenty dollars he walks away, and I am about to walk into the clerk's office to give Linn the twenty dollars, when Linn is already up at the clerk's office, talking to the clerk, and naturally I didn't want to butt in. I thought I would wait until the man came out. I stood at the threshold of the door there of the office, and I started and spoke to one policeman there, and some other man, I don't know who they were. I commenced walking down to the other end of the hall when Lynch comes up to me again and he says, "Here Ellis," he says, "I will save you the trouble of going over to the stable when we get out of here. My boss was in the court here " he says, "and he gave me the other thirty dollars". He gives me the other thirty dollars and he says "No, how I am going to be sure that Linn is going to withdraw the charge". I says, "Well, he wasn't very anxious to press it, and now I suppose you can take his word for it. If you don't want to do that

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leave it up to me" and so I gave him a receipt for it.

Q Now who said anything about the receipt? A He asked me for it-- he says, "how am I going to be sure about it" he asked me for the receipt and I gave it to him.

Q Where did you write out that receipt? A I wrote it out in the hall, in the Magistrate's Court. I can explain that on the chart.

Q How far from the door of the Magistrate's Court were you? A I was right opposite the people in the Magistrate's Court, they could look right at me.

Q Who was standing there near you at the time when you wrote out this receipt? A I don't know.

Q Was Lynch there? A Yes, sure.

Q Do you know whether Linn was there? A Linn was in the clerk's office.

Q Do you know where McAvoy was, the officer? A I did not see him.

Q You did not see him there at all? A No, sir.

Q Were you looking for him at all? A Not at the time, no, sir.

Q In what manner did Lynch hand you this twenty dollars in the first instance, and the thirty dollars in the other instance, was it by stealth or was it openly? A On the side where no one could see him, he took me aside.

Q Where did he take the twenty dollars from? A From his vest pocket.

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Q Did he have those twenty dollars in the pocket of his pants? A No, sir, the vest pocket.

Q Did you see him make any effort with a lead pencil to mark anything? A None whatsoever.

Q Did you see any lead pencil in his hands? A No, sir.

Q Did you see any motion with his hands as though he was marking anything? A No, sir, he was talking to me, and as soon as he got through talking he gave me the twenty dollars, and he put his hand in his vest pocket, and drew it out.

Q Did he mark this twenty dollars? A No, sir.

Q Now about the thirty dollars, where was that given?

A Right at the entrance of the Magistrate's Court. He took me over to the wall, against the wall, and I wrote the receipt out against the wall, facing the courtroom.

Q Where did you get the pencil to write the receipt with? A My own pencil.

Q Took it out of your pocket? A Yes, sir.

Q Where did you get the card? A My left pocket right up here (illustrating).

Q You did not hide yourself or did not hide the things you were writing at that time? A No, sir.

Q That was done right opposite the door of the court?

A Yes, sir.

Q People walked in and out of there? A Yes, sir.

Q Officers around there? A Yes, sir.

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Q Now, what took place after you had the last thirty dollars? A Well, after I got the last thirty dollars, I walked back again into the clerk's office to give the money to Linn, and when I got to the middle of the hall, Linn walks out with the officer.

Q What officer? A McAvoy.

Q If McAvoy walked out with Linn, then he did not stand near you at the time that the thirty dollars was paid? A I did not see him in sight.

Q Could he have passed down to the clerk's office and come up again without your seeing them? A No, sir.

Q So McAvoy and Linn came over -- what took place between them? A McAvoy came out of the clerk's office, and he says, "Come on", McAvoy brought us up before the Magistrate.

Q Now what took place before the Magistrate? A Linn had already signed an affidavit in the clerk's office withdrawing the charge, and the Magistrate looked at the slip, and said, "Why what is this again" he says to Linn "You withdraw this charge, what made you change your mind again, and he says "Well, your Honor, I refuse to prosecute". "Why"? He says, "Well, I have made some settlement".

Q That was said before the Magistrate? A Yes, sir; positively.

Q Sure about that? A Positive.

Q It was not after the Magistrate said, "Have you made

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a settlement"? A No, sir; the Magistrate didn't say anything. It was Linn that said it.

Q What is that? A Linn told the Magistrate.

Q What did the Magistrate then say? A Well, what sort of a settlement did you make", and Linn said, "Well, I refuse to prosecute and that is all", and with that the Magistrate said, "Discharge Lynch".

Q Now, it was said that you were brought four times before the Magistrate, and that after the third time, when and you refused to prosecute, Linn refused to prosecute the Magistrate sent you out to the clerk's office for the purpose of drawing up an affidavit of withdrawal of prosecution, is that true? A No, sir; we were only before the Magistrate twice.

Q Only twice before the Magistrate? A Yes, sir, only twice before the Magistrate.

Q Now, on which occasion did you say that you would not prosecute? A The same time when the Magistrate asked me to.

Q When was that? A The second time.

Q Well, what occurred about that? A Well, the Magistrate asked me, he said, "Will you prosecute?"

Q What did you say? A I said, "Your Honor", I said, "I haven't got no personal interest in this affair at all? I am simply here to see that Mr. Linn gets his rights, I am just here as a witness, that is all.

Q That was after the fifty dollars had been paid, isn't it

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that it? A No, sir.

Q Was that before the fifty had been paid? A Yes, sir, before it, positively.

Q What was said then about going into the clerk's office and your prosecuting, anything? A Well, he didn't say a word about that after I had refused to prosecute -- the Magistrate, Herman, told Linn that he didn't see why I really should, that it was up to him, and so he said he would.

Q When did you offer to prosecute, the first time or second time that you were before the Magistrate? A I didn't offer to prosecute at any time.

Q When were you requested to prosecute? A The second time.

Q Did you then immediately refuse to prosecute?

A Yes, sir.

Q Did you go into the clerk's office under orders from the Magistrate? A I didn't go into the clerk's office; it was Linn that went into the clerk's office.

Q You didn't go there with him? A We walked up to the clerk's office, as far as the door.

Q You didn't go into the clerk's office? A No, sir.

Q Did the Magistrate at any time request you to prosecute? A Yes, sir.

Q When was that? A Well, I think, as soon as we got up to the --

/ Q Was that the first time when you were before the Mag-

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istrate? A No, sir, the second time; the first time he asked me what I had seen and I told him.

Q At that time-- A At that time Linn said he would prosecute.

Q He would positively? A Yes, sir; because the Magistrate told him that was the only way he could get any of his belongings back.

Q Then he said he would prosecute? A Yes, sir.

Q Did you say at anytime to the Magistrate that you would prosecute? A Never at any time.

Q Something was said about your interfering with Linn while he was before the clerk, what was there about that?

A As far as I went, all I did at the clerk's office was to go and tell Linn that Lynch wanted to give him money, that is the only time I went in the clerk's office.

Q Was that while he was before the clerk? A He was sitting on a chair waiting to go before the clerk.

Q Did you speak to the clerk? A No, sir.

Q Did the clerk speak to you? A No, sir.

Q Did you at any time in the clerk's office urge Linn to prosecute? A No, sir.

Q Were you at any time at the Clerk's desk for the purpose of prosecuting? A No, sir; never.

Q Now, when you walked the first time through that hallway that has been spoken of how was the order of the march, who was first? A Well, I can't remember.

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Q How far did you go -- you didn't go to the clerk's office at all? A I walked as far as the threshold of the door.

Q And you stood? A I stood at the window and smoked a cigarette.

Q The only time you say you went into the clerk's office was when you informed Linn that this man was willing to pay? A Yes, sir.

Q To settle? A Yes, sir.

Q You didn't speak to Lynch first about the settlement? A No, sir.

Q Did you tell him you were in bad, "Cabby, you might get one year" or something like that? A No, sir; never said anything like that.

Q Did you say that? A No, sir.

Q Did you say that if he paid you the money you would withhold any testimony? A No, sir; I had told the Magistrate already what had happened so that I could not have withheld anything.

Q Did you at any time say to the Magistrate anything different from what you had told him? A No, sir.

Q Did you at any time offer to Lynch to say to the Magistrate anything different from what you had already told him? A No, sir.

Q Did you ever intend to extort any money? A None whatsoever.

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Q Did you have any intention, when you received the money from Lynch to keep that for yourself? A No, sir.

Q Did you have any intention when you received that money from Lynch to make any false statement to the Magistrate? A No, sir.

Q Did you have any intention at that time if you were called as a witness not to testify to the truth? A No, sir.

Q Now from the time that you received the money from Lynch until the time when you were arrested, did you have any opportunity to speak Linn for the purpose of handing the money over to him? A No, sir.

Q Did you intend to give him that money? A Positively I have not finished--

Q Well, is there anything else? A I hadn't finished up to the time I was arrested. I want to show where I didn't have any chance to give Linn the money after we left the Magistrate.

MR. GOLDZIER: That has been testified to by the other side, and we need not go into that.

Q You heard that the officer had his arm linked in yours when you were walking out of the court? A Yes, sir.

Q And the first thing when you went out downstairs --
A As I got off the first step he stopped me.

Q He stopped you? A Yes, sir.

Q And arrested you? A Yes, sir, he asked me for the fifty dollars.

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Q You took the fifty dollars out and gave it to him? ¹³⁸

A No, sir; I told him the fifty dollars did not belong to me.

Q Did you tell that to the officer? A Yes, sir, I told him it belonged to Linn.

Q What did he say? A He said that it belongs to me, and I said, "That is the first I knew of it", and he showed me his badge.

Q That was not McAvoy? A No, sir; it was a detective.

Q That was another man? A Yes, sir.

Q Did you give the money to that other man? A Yes, sir, positively.

CROSS EXAMINATION BY MR. WELLMAN:

Q Where were you working at this time? November, 1911?

MR. GOLDZIER: Excuse me a moment. I want to ask him another question.

BY MR. GOLDZIER:

Q How did you come by the name of Ellis? A I was on the stage at that time performing, and I used it as a professional name.

Q Was it your stage name? A At the time I was living at the King Edward I was registered there by the name of Ellis.

Q Your professional name? A Yes, sir.

Q Your real name is Scheckman? A I had that name on my car, the receipt I gave him, Scheckman is my name.

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BY MR. WELLMAN:

Q Where were you working at this time November, 1911?

A Rehearsing for a show.

Q What sort of a show? A A vaudeville show.

Q What was the name of it? A Well, a piano and singing act.

Q Who were you rehearsing with, give me the name of the people? A A young fellow named Philip Allen.

Q Where does he live? A I beg pardon.

Q Where does he live? A I know he lived at Washington Heights at the time.

Q What was his address there? A Well, it was Hamilton Terrace, I don't know exactly the number, we used to meet down at Theodore Moss' office, the music publisher Broadway and 39th street, and rehearsed there in his office.

Q How would you arrange to meet, suppose you wanted to communicate with him, where would you write him? A Well, I would never write him, I just managed the act, and he used to come to me.

Q You always took the chance that he would be there?

A Yes, sir.

Q Just took the chance of meeting him? A Yes, sir.

Q Is that it? A Yes, sir.

Q You never knew where he lived? (No answer.)

Q How long have you known Philip Allen of Hamilton Terrace? A Two years.

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Q Who is the other person or were the others? A The other fellow's name was Leroy.

Q Leroy? A Yes, sir.

Q Is that the first name? A No, sir; that is the second name, Leroy.

Q What is his first name? A Frank E.

Q Where did he live? A I did not know where he lived.

Q You took a chance of meeting him too? A It was not a chance. We had a stipulated time every day what time we should meet.

Q When did you settle that time? A From the first time we started to rehearse.

Q Who first started to rehearse? A I met him-- this Philip Allen I knew personally, and I was introduced to Leroy through Allen.

Q At the time he introduced you you arranged this whole thing then? A Not the first day, no, sir.

Q How did you see them again? A I made an appointment with Philip Allen, and he had this Leroy along with him.

Q So he knew Leroy's address, but you did not? A Yes, sir.

Q How long have you known Leroy? A We were rehearsing this act for a month and a half.

Q Did you ever produce it? A No, sir.

Q That is what you were working at? A Yes, sir.

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Q Rehearsing an act that you never produced? A Well, we did not produce it on the stage, but we played in different cafes.

Q I mean by work what brings the coin, money. A That brought us money.

Q To support yourself and wife. You were married at that time? A Yes, sir.

Q What work did you do? A I played the piano.

Q Where? A That night when this happened you mean?

Q At that time -- not that very night? A Well, at Barrons' cafe.

Q You got a job at night? A Yes, sir.

Q You were going around from place to place trying to get a job? A No, sir, we got them through an agent.

Q Who is the agent? A Wolfey Gilbert, the song writer.

Q Where is he? A With a publishing company at 37th street and Broadway.

Q He would get you a night job somewhere? A Yes, sir.

Q How much would he get for that? A I don't know.

Q I mean from you, how much percentage? A 5%.

Q 5%? A Yes, sir.

Q How much would you get per night? A Well, it was according to the length of time that we worked.

Q I mean on the average? A I couldn't tell you.

Q A dollar and a half or something like that? A I couldn't just state.

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Q Ten dollars? A We never worked for less than five dollars a night.

Q Did you ever make fifty dollars in a day before?

A Fifty dollars in a day?

Q Fifty dollars? A No, sir.

Q At any rate you had not been working at this very time had you? A Yes, sir, I call that work.

Q Rehearsing a vaudeville which you never produced?

A Well we worked in the evening.

Q What did you do in the evening? A Played the piano at these cafes.

Q This very night were you playing. do you remember?

A Yes, sir.

Q Do you remember where? A Yes, sir.

Q Whereabouts? A Barrons' cafe, Schermerhorn street, Broadway, Brooklyn.

Q Was that a new place just opened up? A Yes, sir.

Q A place where women and men would dance, and all that sort of thing? A No, sir; no dancing; it was a restaurant.

Q No dancing allowed? A Just a restaurant and cafe.

Q Men and women both? A Yes, sir.

Q Was there a saloon attached? A No, sir.

Q Where did you get that job? A This Wolfey Gilbert, he opened this cafe over there that night and he asked me to accommodate him.

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Q That was one of his cafes? A Yes, sir.

Q Had you been playing there long? A No, sir.

Q Now you worked at one time for the Oriental Shirt Waist and Dress Company, didn't you? A No, sir.

Q What is that? A No, sir.

Q Well, the Pansy Manufacturing Company? A Well, I will explain that.

Q Just a minute. I have not asked you to explain anything. I am referring to your card "Murray Scheckman, representing these two companies", A Yes, sir.

Q Did you have any connection with them? A Well in a way I did.

Q Well, tell us the way? A I will explain that. I was supposed to go and travel south for these people.

Q With samples? A Yes, sir; as a salesman. We had drawn up a contract with a lawyer.

Q Who was the lawyer, do you remember? A No, sir.

Q All right. A It was his lawyer, he took me down there.

Q Who is he, who do you mean by "his lawyer"? A Mr. Bernstein, the proprietor of this concern, it is all one concern, the Pansy and the Oriental, all one concern under two names.

Q Yes, I notice the address is the same? A Yes, sir; he gave me the contract with the understanding that

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there was to be a guarantee on that contract, that¹⁴⁴ is, that if at the end of the yea -- he gave me a contract for a year -- if at the end of the year I was short why some one would make good, it was a sort of a bond.

Q Did you ever start to do any work for him? A No, sir.

Q Ever take any samples? A No, sir.

Q Never sold anything for him? A No, sir.

Q Under this contract? A No, sir.

Q Did you sign the contract? A No, sir.

Q Never got as far as that? A No, sir; he gave me the contract --

Q How did you come to have these cards with you?

A He had those cards printed.

Q Representing the Oriental Shirt Waist and the Fanny Manufacturing Company? A I didn't pay for those cards he had them printed for me.

Q I didn't ask you that. How did you happen to have them with you? A He gave them to me.

Q Did you use them as your cards? A Well, in what way?

Q Did you give them to people? A Well, if they wanted my name sure I would give them to them.

Q You would give them this card representing yourself as a representative of the oriental? A Yes, sir.

Q Or the Fanny? A Yes, sir, of course, but I let them know I was not with that concern, but I gave them that card.

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Q You said the name of the man was M. Bernstein?

A Yes, sir.

Q Isn't it a fact that in 1911, you had \$59 worth of samples which you took from him under that contract, and you never appeared again? A No, sir.

Q Neither you nor the samples? A No, sir.

Q Now I show you a bill itemized on the bill head of the Oriental, and I ask you if that is correct? A No, sir.

Q That is not correct? A No, sir.

Q That whole thing is a fabrication? Is it? A I won't swear; I don't know anything about that.

Q Well is it totally incorrect? A I don't know of any samples because I have never taken any.

MR. GOLDZIER: I object to that.

THE COURT: Is it true or false?

THE WITNESS: No, sir, it is not true.

BY MR. WELLMAN:

Q Is it entirely untrue? A Yes, sir, positively, I never worked for the man.

Q You never owed him anything? A No, sir.

Q At this time you were living with your mother, weren't you? A Yes, sir.

Q What was the address? A At that time it was, I believe 1407 Wilkens avenue.

Q Did you ever hear of this man making a claim for this money?

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MR. GOLDZIER: I object to this. I think he cannot be cross examined on this matter whether a man made a claim or not. He has now denied that he was guilty of that offense. I don't think he ought to be allowed to cross examine into this matter.

Objection overruled; exception.

A No, sir.

Q He never made a claim to it? A Not to me, no, sir.

Q Or any claim that you know of? A No, sir.

Q Is that right? A Yes, sir.

Q Do you know his handwriting? A No, sir.

Q By the way, do you know a man named Harry Schlessel?

A No, sir.

Q The man who live at the King Edward Hotel at the time you were there? A No, sir; I was only there three days.

Q Only three days? A Yes, sir, three or four days.

Q How did you come to leave? A Well, I was arrested.

Q That was the occasion of your leaving? A Yes, sir.

Q Did you go back there when you were out on bail?

A No, sir.

Q How was that? A Well -- isn't it a fact that a man named Schlessel gave you two dresses belonging to his wife in a suit case? A Not that I can remember.

Q And that you disappeared? A No, sir; I was not acquainted with anybody at the hotel.

Q You were not acquainted with anybody there? A No,

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sir.

Q And not with Harry Schlessel? A No, sir.

Q Didn't you see a man in the Magistrate's Court when you were arrested, -- a man from the King Edward Hotel?

A No, sir.

Q From whom you took two ladies dresses? A No, sir.

Q You did not? A No, sir.

Q On December 1st, that is the date? A No, sir.

Q Now, then, on the 29th of November, that night, I understand the first thing that took place was that a crowd of about thirty people gathered there in 47th street between Broadway and 6th avenue? A Yes, sir.

Q Is that right? A Yes, sir.

Q You saw Linn in some argument with a cabby? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now what was your first talk with Linn when you came to his rescue there? A I asked him whether he was hurt.

Q What did he say? A He said "I am, I cannot see.

Q He said, "I cannot "see"? A Yes, sir.

Q Go ahead. A And I said, "How much money did you have in your pocket, and he said \$20. I said, "I guess that's the man because I saw him take it out of your pocket." He looked in his pocket, and he said, "Yes, I am missing a pin and a watch and a ring, and a walking stick.

Q He said all that to you in 47th street? A Yes, sir.

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Q Is that right? A Yes, sir.

Q Did you make any search for those things? A No, sir.

Q At that time? A No, sir.

Q You hadn't seen the cabman take them from him, had you? A All I saw him take was the money.

Q Where did he take that from? A From the side pocket, the trousers pocket.

Q Now when was the first report that you made of that, the first report you made of having seen him taking money from Linn's pocket? A To the Captain at the police station.

Q Didn't you tell the officer on the street? A Well, the assault the officer asked me whether I saw him, so I told him yes.

Q You didn't say anything about the robbery then? A No, sir, he didn't ask me anything about it.

Q What did you say to the lieutenant about it? A I just told him what happened, the same story as I told you here.

Q That you had seen him put his hand in the pocket and taking out the money? A Yes, sir.

Q You had quite a conversation with the lieutenant there? A No, sir, not very much.

Q Didn't he go pretty deeply into the case? A No, sir, not very deeply, no, sir.

Q Deeply enough, to congratulate you on your splendid work in the case, didn't he? A Well, I don't know whether it was that -- whether you would call it deep. I remember

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him just asking me a few questions .

Q And then came right out with the compliment after saying a few words to you? A He asked me whether I saw him get beat up and I told him yes, and he asked me what else I saw, and I told him I saw him get robbed.

Q He immediately complimented you and that was the end of it, is that it? A Well, it wasn't exactly the end of it. After he complimented me he asked me--

Q Did you say anything about the stick pin? A No.

Q And the ring? A No, sir.

Q And these things? A No, sir.

Q Didn't you say Linn had told you that? A No, sir.

Q Had Linn told you about that? A Yes, sir; he told the police captain about it.

Q He did? A Yes, sir.

Q The lieutenant who was behind the desk? A Yes, sir.

Q The officer was there when he told him? A I suppose so.

Q And Lynch was there? A Yes, sir.

Q Sure of that? A Yes, sir.

Q He told of that at that time? A Yes, sir.

Q Now what else did Linn say to you out there in the street before the officer came if anything, than these various articles he had lost, and how he didn't feel well, and he couldn't see? A Well, he didn't have very much time to tell me, but more as I walked down the street the

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policeman came up with the cab driver.

Q Did he have a blackeye, is that why he couldn't see?

A No, sir, he was dazed from the kicking in the head.

Q Not from bruises on his eyes or anything of that sort? A No, sir; he was swelled up around his head, he told me.

Q His head had been so kicked he could not see, was that it? A Well not visibly.

Q Well, generally, mentall he could not see because he was dazed, and yet he enumerated to you the stick pin and the ring, and all these things he had lost?

A Yes, sir.

Q And the money? A Yes, sir.

Q Did he go through his pockets? A I told him about the money and asked him to look in his pockets.

Q He made a regular search through his person. A Yes, sir

Q Now then after the officer came what did Linn say?

A Well, Linn told the officer he wasn't sure whether that was the man because he could not tell.

Q He could not see -- he was mentally dazed, and he could not see? A Yes, sir.

Q What was the rest? A Well, the officer asked me whether I saw the happening and I told him I had.

Q But Linn went on with the officer, and said that if he saw him ten times more he wouldn't know him?

A That is it.

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Q Was he very drunk? A Yes, sir.

Q Now were you sure that this Lynch was the man?

A Positive.

Q Perfectly positive? A Yes, sir.

Q Then why was it, why is it you say you were not willing to make the complaint before the Magistrate?

A Well --

Q You followed this thing up, didn't you, you had gone to the police station house, been complimented for your work, you had gone to the Magistrate's Court at a very early hour in the morning, considering that this happened about 3 a. m., and yet when Linn would not make the complaint you deny that you said that you would, is that right?

A Yes, sir.

Q Why was that? A I had no personal interest in the affair; it was just merely doing a favor to another man.

Q But you were interested enough to go there? A I was interested enough in Mr. Linn.

Q You had been complimented on the interest you had taken in Mr. Linn? A Yes, sir.

Q Then why weren't you willing to make a complaint?

A If he had no more interest in himself I wasn't going to take it.

Q How many times was it that Linn refused to make a complaint -- every time he was brought before the Magistrate, wasn't it? A Once -- he refused the first time and

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then he had consented again --

Q He always said he wasn't sure of this man? A Yes, sir.

Q There was no question about that? A There was nobody else there but him and I.

Q Well after you refused you say you were sent back to the complaint clerk's office three times, is that right, or four? A Twice.

Q Three times counting the withdrawal, is that right?

A Well, when he was through -- that was the second time -- we didn't come up to the Magistrate -- we withdrew right in the clerk's office.

Q When Lynch came up, as you said, and spoke to you he said to you "I want to see if this Linn would not take a settlement" or something of that sort -- when was that, pretty near the end of the game or of the proceeding?

A That was when Linn was in the second time making the charge against him.

Q He said "Linn won't make this complaint"? A No, sir, he didn't tell the gentleman that.

Q "We have a settlement"? (No answer).

Q Linn had said to the Magistrate he would not? A Yes, sir.

Q Had you told the Magistrate you had seen the robbery?

A Yes, sir.

Q Just before that? A The first time we were up.

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Q Now you say that both you and Linn had refused to make a complaint, and that Lynch came up to you and offered to make a settlement? A No, sir.

Q Is that right? A No, sir, at the time Lynch came up to me, and asked me for a settlement Linn was in the clerk's office with the intention of making a charge, a personal charge against him.

Q You mean he had been brought there by the officer?
A Yes, sir.

Q You don't know what his intentions were? A Well, the Magistrate directed him to do it.

Q That was after you had seen the robbery -- you are sure the Magistrate did not direct you to make a complaint, and sure you did not say that in the interests of public justice you were willing to? A No, sir.

Q Sure of that? A Positive.

Q Are you sure that isn't why the conversation came up with Lynch? A Sure of that.

Q Then it is your view of it, and your memory of it that while you both refused to make the complaint Lynch comes over and offers to make a settlement? A Well, Linn had not refused to make it; he was going to make it at that time.

Q He was going to make it? A He went in the clerk's office with the intention of making it.

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Q I thought you said you did not know what his intention was? A Because the Magistrate directed him to do it.

Q Why didn't Lynch go up to Linn? A I asked him that and he said "Well, if the officer catches me talking to Linn he would not allow it."

Q So then you knew this was wrong? A I did not; he told me that.

Q Lynch told you it was wrong? A No, sir; he told me "If I was talking to Linn -- if he was talking to Linn--"

Q That he would not dare to go by the officer, and talk to Linn about a settlement? A Yes, sir.

Q Yet you go to Linn and arrange a settlement between them, is that it? A Yes, sir.

Q Now the amount of money that Linn claimed to have lost was in the neighborhood of nine hundred dollars, wasn't it? A He didn't tell me at the time.

Q You knew of all these rings, pins and things? A I didn't know they were of that value.

Q You knew about the money, the sum of money? A Yes.

Q That was how much? A \$20.

Q Sure it was \$20 or \$19? A That is what he told me.

Q About \$20? A He told me \$20.

Q Yet you say Lynch offered fifty dollars, to give you fifty dollars, to give you fifty dollars to settle twenty that had been taken from this man? A That is what he

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offered, yes, sir.

Q That had been taken from this man? A Yes, sir.

Q Have you ever been convicted of a crime? A Never.

Q Of anything? A Never.

Q A misdemeanor? A No, sir.

Q A breach of the peace or anything? A No, sir.

Q Why weren't you on the 3rd of February, 1913, convicted of disorderly conduct, being a disorderly person in the Domestic relations Court, and put on probation? A Well yes, sir.

Q What is that? A Yes, sir.

Q Three weeks ago? A Yes, sir.

Q Weren't you ordered by the Magistrate to pay the sum of three dollars a week to your wife? A Yes, sir.

Q You were put on probation? A Yes, sir.

Q You broke that probation? A No, sir; I am back with my wife now.

Q What is that? A I live with my wife.

Q You do? A Yes, sir.

Q At this time? A Yes, sir.

Q Did you on last Saturday, Saturday last? A Yes, sir.

Q You lived with her then? A Living with her since Friday evening.

Q Since Friday evening? A Yes, sir.

Q Since this case was about to begin? A I didn't know about the case coming up until Saturday.

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Q Isn't it a fact that you were living with Mrs. Abrams at 858 Union avenue, Bronx? A No, sir.

Q Do you know Mrs. Abrams? A A friend, yes, sir.

Q Have you ever lived with her? A No, sir; she is a married woman.

Q I know and you are a married man? A Yes, sir.

Q You were not living with your wife all the time?
A No, sir.

Q You abandoned her when she was about to give birth to a child, didn't you? A No, sir; I was arrested at that time; that was over a year ago.

Q You were on bail -- when were you arrested? A November 27th, 1911.

Q On February 21, 1912 she gave birth in Lebanon Hospital? A I was living with her at that time; I was living with her.

Q You were living with her? A On Bryant avenue.

Q You were? A Yes, sir.

Q Has your lawyer told you that your wife cannot testify against you? A No, sir.

Q You don't know that you are safe in saying that?
A I saw my wife only this morning.

Q Now as I understand it you testify that when Lynch came to you about the proposition of settlement-- that you went to Linn? A Yes, sir.

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Q And spoke to him about it? A Yes, sir.

Q Asked him how much he would settle for, and he said two hundred dollars? A Yes, sir.

Q Then you came back to Lynch and told him that?
A Yes, sir.

Q What did he say? A He said he didn't have two hundred dollars.

Q That he could get fifty, is that right? A Yes, sir.

Q You went and told Linn about that? A Yes, sir.

Q Asked him if he would take fifty? A Yes, sir.

Q What did he say? A He said "Well, I might as well take the fifty, better than nothing.

Q Linn said that to you? A Yes, sir.

Q Then you went back to Lynch? and got twenty, didn't you? A I told him he only had twenty, and he told me to take twenty.

Q All right. You took the twenty? A Yes, sir.

Q You went in there, back and forth? A No, sir; he told me that at first, I said, "All I can get now is twenty and thirty later.

Q You took the twenty dollar bill, and told Linn that you had taken it? A Well, Linn told me to go out and take it.

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Q You took the twenty dollar bill and told Linn that you had taken it? A Well, Linn told me to go out and take it.

Q Did you tell him after you had taken it? A No, sir; I didn't have a chance.

Q There was sometime before you got the other thirty? A No, sir.

Q Right away? A No, sir, about three or four minutes after, as I understand.

Q Altogether you made three trips back and forth between Lynch and Linn? A Two.

Q Where was Lynch and Linn? A Linn was in the clerk's office.

Q And where was Lynch? A In the hallway.

Q And where was the officer? A I didn't see him around.

Q You didn't see him? A No, sir.

Q Haven't you told us it was three times, first Lynch comes to you and tells you that he want to settle ? A Yes, sir.

Q You go and tell Linn that, that was one time? A Yes, sir.

Q You come back to Lynch and tell him \$200 and he says he has only got fifty and you go and tell Linn that? A Three times.

Q Three times? A Yes, sir.

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Q Back and forth from the hallway into the complaint room? A Yes, sir.

Q You don't know where the officer was during that time? A No, sir.

Q Now, when you were up before the Magistrate you knew the Magistrate knew you had this money right in your pocket, didn't you? A No, sir.

Q Didn't you see the clerk go over and speak to him? A No, sir, I did not I was not in the courtroom, I was in the hall.

Q That was done when you were not then looking if it was done -- you say it was not? A (No answer).

Q The Magistrate asked Linn if he had made any settlement, didn't he? A No, sir.

Q Or Linn said something about it, that is your version of it, that he said "We have settled this"? A Yes, sir.

Q What did he say? A We settled this case out of court.

Q We settled this case out of court? A Yes, sir.

Q Linn said that to the Magistrate? A Yes.

Q And the Magistrate thereupon said "Discharged"? A No, sir.

Q What did he say? A He said "Why, what do you mean"?

Q You didn't tell us that before? A Well, Linn said, "Well, I just refuse to prosecute, that is all.

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Q And the judge dropped it there? A Yes, sir.

Q Although Linn said in open court "We have settled this out of court"? A Well, it seemed that way.

Q Was that the fact? A Those were the words, yes, sir.

Q Magistrate Hermann then dropped the whole thing and said "Discharged"? A Yes, sir.

Q Then you were arrested and brought back the hearing was heard right away? A Yes, sir.

Q Lynch told this conversation that he had with you -- not the way you tell it, but the way he tells it, is that right?

A I don't remember that.

Q Lynch told his story to the judge, about your having threatened him, is that right? A I don't remember that.

Q There was a hearing there? A Well, I didn't have anybody there to represent me.

Q You didn't have any interest in that, you don't remember it? A I have an interest in it, but I don't remember it.

Q What is that? A I don't remember it.

Q When your case came on and you under arrest your memory ceased, is that it? A No, sir.

Q Don't you remember that Lynch told his story to the judge against you, how you had threatened him? A I don't remember that.

Q You don't remember? A No, sir.

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Q Do you remember when he was called as a witness, don't you? A I don't know whether he was called as a witness or not, but any way the District Attorney spoke to the Magistrate for a few minutes and took me back to the call.

Q But they had a hearing? A Not that I know of.

Q You were held for the Grand Jury? A Yes, sir.

Q Don't you remember that? A I know I was held for the Grand Jury.

Q But you are not prepared to say that Lynch told his story there? A Not that I know of.

Q Do you remember saying to Lynch that if Linn would accept this \$50 that would be satisfactory to him? A No, sir.

Q Do you remember saying that to him and that is why he demanded of you "How am I going to be certain that he won't prosecute me anyway"? A Yes, sir.

Q Do you remember saying "Why he has given you his word that he won't prosecute, that is why he is taking the money from you, he is settling the case". Is that right? A Yes, sir.

Q You understood very well, according to your story, that this settlement was made on the agreement that there should be no prosecution? A Yes, sir.

Q You said a minute ago that you could not withhold any testimony. You said to your lawyer that you had already told ^{it} to

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the Magistrate -- you hadnot been sworn, had you, in the form of an affidavit or complaint had you? A Well, I don't know whether it was in an affidavit or not, but I just told him.

Q As a matter of fact you did withhold it, you didn't make a complaint after you got this \$50, is that the fact?

MR. GOLDZIER: I object to that -- that he withheld it.

THE COURT: He may answer. It goes to the credibility. Exception.

Q what is the answer? A No, sir.

RE-DIRECT EXAMINATION BY MR. GOLDZIER:

Q Now, after you had received the money and had the conversation with Lynch did anyone ask you to testify as a witness? A No, sir.

Q Did anyone at any time ask you to testify as a witness? A No, sir.

Q Were you called as a witness? A No, sir.

Q Were you requested by anyone to be a witness? A No, sir.

Q Were you requested to be sworn? A No, sir.

Q Now, when you say you were arrested in this case -- when were you arrested in this case? A The date you mean?

Q The date, yes, sir. A The 27th of November, 1911, the day before Thanksgiving, I believe it was.

MR. WELLMAN: It was on the 29th.

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Q Were you arrested on the 27th or the 29th? A The 29th, the day before Thanksgiving.

Q When the officer arrested you, what did he do with you? A Well, he took me up, back into the court.

Q Before the Magistrate? A No, sir; took me into a cell.

Q Were you brought for the court? A Yes, sir.

Q How long after you had been in the cell? A About three-quarters of an hour.

Q What was said then about your case? A It came up before the Magistrate, and he was surprised to see me back.

Q What did he say? A Well, he said, "What is this?"

Q Now, what did any one else say? A The District Attorney spoke to him for some time.

Q Did you hear what the district attorney said? A No, sir.

Q Did he whisper to the Magistrate? A I could not say that he whispered, I just don't remember what went on at that time.

Q Did you pay no attention to your case, did you or did you not pay attention to your case? A No, sir, I did not.

Q You did not pay attention to it? A No, sir.

Q You were being interested in your being locked up, weren't you? A I was.

Q Were you interested or not? A No, sir.

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Q Were you interested or not? A No, sir.

Q You were not interested in the fact whether you were locked up or not? A No, sir.

Q You did not care whether you ever got out or not.

Q Well, what do you mean by saying you were not interested in this matter of yours? A Well, I didn't know what it was all about.

Q Did anyone inform you, or did the Magistrate, what you were there for? A The Magistrate later did.

Q What did he say? A He told me what I was charged with.

Q What did he say that you were charged with? A Well, the indictment, alleged extortion.

Q Did the Magistrate say that you were charged with Extortion? A Yes, sir.

Q Did Lynch say anything? A No, sir, I can't remember that.

Q Did anyone else say anything? A I can only remember he went over and talked to the Magistrate.

Q What was the matter with you at that time that you remember. Anything the matter with your mind? A No, sir.

Q Or your memory? A I could not say, I don't remember.

Q You could not say? A No, sir.

Q How long were you locked up? A Well.

Q Don't you know that? Were you locked up? A Yes, sir. Three months.

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Q You remember that? A Yes, sir.

Q Well, I am glad of it. Now, during that time you did not live with your wife? A No, sir.

Q During that time you did not perform this piece for which you had rehearsed? A No, sir.

Q Did you? A No, sir.

Q Now when you were arrested on the charge of your wife what was that for, what did she have you arrested for? A Non-support.

Q Did you support her after that? A Yes, sir.

Q Did you support her since that? A Yes, sir.

Q And lived with her since? A Yes, sir.

Q And this charge has been withdrawn? A Yes, sir.

MR. WELLMAN: What charge?

MR. GOLDZIER: This charge against him for disorderly conduct.

Q So far as you know? A The probation was taken off.

Q Taken off? A Yes, sir.

Q When was that? A Friday.

Q At the request of your wife? A Yes, sir.

BY MR. WELLMAN:

Q Then that is why you went back to your wife so as to have the probation removed, is that right? A No, sir.

Q You were brought in on a warrant, weren't you, Friday,

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into court? A No, sir, not Friday, that was two weeks ago.

Q But I mean when the probation was removed, weren't you brought into court? A We went down ourselves.

Q And told the Magistrate, the Judge, that you were going to live together, is that right? A Yes, sir; my wife went down with me.

Q How much have you lived with your wife all the time you have been married? A I have been away from her the three months I was arrested -- one month outside of that -- the month previous to when I was arrested, that is when I was living at the hotel.

Q Did you ever have any quarrels with her?

MR. GOLDZIER: I object to that. Every man quarrels with his wife.

MR. WELLMAN: I am cross examining him on his statement that he lived with his wife.

THE COURT: we won't assume that that fact is true, but I will sustain the objection to the question.

Q Isn't it a fact, Scheckman, that you put your wife on the street for two weeks after you had been married? A Positively not.

Q And that she went before the Grand Jury and when you entreated her and begged off you were never indicted, isn't that the fact?

Objected to; objection sustained.

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THE COURT: You may ask him whether he had abused his wife in any way. It may go to his credibility, but not as to whether or not charges were made against him. You may ask him as to the fact of whether or not he abused his wife. That perhaps goes to his credibility, but you cannot ask as to whether or not charges were made against him.

MR. WELLMAN: He has denied that.

BY MR. GOLDZIER: Q Did you abuse your wife in any way? A Never.

Q Did you ever try to induce her to go on the street?

A No, sir.

Q Of course you had quarrels with your wife, didn't you? A Yes, sir.

THE COURT: I kept that out.

MR. GOLDZIER: And I have brought it in, because every one will assume that.

MR. WELLMAN: You bring it in?

MR. GOLDZIER: Yes, I bring it in.

BY MR. WELLMAN:

Q Isn't it a fact that one of your quarrels was about putting her on the street and she objected to it? A No, sir, the quarrel was on account of me not wanting to live with her because she was not behaving herself.

Q That was it? A Yes, sir.

Q What was the result of the quarrel? A We made up.

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Q Was that after she had been before the Grand Jury?

MR. GOLDZIER: I object to your bringing in the Grand Jury again or any other proceeding.

THE WITNESS: She was before the Grand Jury two years ago. This happened two years ago.

BY MR. GOLDZIER:

Q You mean this quarrel was two years ago? A No, sir, the Grand Jury affair.

Q What do you mean by the Grand Jury. Were you ever before the Grand Jury? A No, sir.

Q Do you know anything about any proceedings that were before the Grand Jury against you except proceedings in this case here of your own knowledge. Do you know anything about it. Come out with it. Let us know what that was. A Two years ago, yes, sir.

Q What is that. Tell us about the Grand Jury? A Trouble with my wife.

Q Who made the trouble? A She did.

Q With you? A Yes, sir.

Q Did you have trouble with her? A Yes, sir.

Q What was your trouble with her in the first instance. Let us hear what it was? A Well, she claimed that --

Q Now, what did you claim?

MR. WELIMAN: Let him answer.

THE COURT: You have asked him a question.

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MR. WELLMAN: She claimed what?

THE WITNESS: She claimed that I wanted to force her to go out on the street.

BY MR. GOLDZIER: Q What is that -- she claimed that? A Yes, sir.

Q Was it true? A No, sir; she withdrew it before the Grand Jury.

Q What did you say when she made that claim? A Well, I protested.

Q What is that? A I protested.

Q You said it was true? A Yes, sir.

Q As a fact, it was true? A Yes, sir.

THE COURT: He says that his wife charged him; he denied it and she withdrew it.

Q It was true? A No, sir.

THE COURT: Is that enough? Do you want anything further from this witness?

MR. GOLDZIER: That is all.

THE COURT: Call your next witness.

A. J O S E P H G E I S T, a witness called on behalf of the defendant being duly sworn, testified as follows:

(The witness states that he lives at 520 West 144th Street).

DIRECT EXAMINATION BY MR. GOLDZIER:

Q Mr. Geist, you are an attorney and counsellor at law?

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A I am, sir.

Q Do you know Murray Schreckman? A I do.

Q How long have you known him? A Well, for a period of about ten years.

Q Do you know regarding his character? A I do.

Q What is his character? A Good.

MR. WELLMAN: Character for what?

MR. GOLDZIER: Character in general.

MR. WELLMAN: I object to the form of the question.

THE COURT: I will let it stand. He has answered and said that his character is good.

CROSS EXAMINATION BY MR. WELLMAN:

Q How long did you say you had known him? A For a period of about ten years.

Q You testified at the last trial, did you not? A I did, sir.

Q To his reputation? A Yes, sir.

Q Had you learned at that time or have you learned since that this defendant for a long period of time was not living with his wife and had serious trouble with her? A I did, yes, sir.

Q You had learned it? A I knew it at that time and I know to-day.

Q Do you know to-day that he has been convicted of being a disorderly person on the complaint of his wife? A No, I did

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not know that until I just came here to-day.

Q In the Domestic Relations Court? That would not change my opinion any.

Q That would not? A Knowing the wife it would not change my opinion.

THE COURT: How many more character witnesses have you?

MR. GOLDZIER: I have two more.

THE COURT: You may call them. I will hear two more.

H A R R Y F R A N K, a witness called and being duly sworn on behalf of the defendant, testified as follows:

(The witness states that he lives at 1507 52nd Street, Brooklyn.)

DIRECT EXAMINATION BY MR. GOLDZIER:

Q Mr. Frank, you are an uncle of the defendant? A Yes, sir.

Q How long have you known him? A Since he was born.

Q Do you know his reputation? A Yes, sir.

Q In the community? A Yes, sir.

Q What is it good or bad? A Well, it was always good.

Q Do you know anything against his character? A No, sir; not that I know of.

Q Have you heard anything against his character?

MR. WELLMAN: I object to that.

THE COURT: I think he has a right to say whether he heard anything against his character. You may tell us

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whether you have or not.

THE WITNESS: Never heard anything bad about him.

THE COURT: You may cross examine.

MR. WELLMAN: No questions.

P I N C U S S H A L I T A, a witness called on behalf of
the defendant, testified as follows:

DIRECT EXAMINATION BY MR. GOLDZIER:

Q Do you know Murray Scheckman? A Yes, sir.

Q How long have you known him? A For the last nineteen
years.

Q Do you know his reputation? A Yes, sir.

Q What is it good or bad? A Good.

Q Have you ever heard anything against his character?

A No, sir.

CROSS EXAMINATION BY MR. WELLMAN:

Q You have known his family, haven't you? A Yes, sir.

Q And known him? A Yes, sir. I know some of his
family too, yes, sir.

Q A good many years? A Yes, sir.

Q Did you ever employ him? A No, sir.

Q Have you ever heard anything else about him at all
in reference to his troubles or anything? A The recent
trouble, yes, sir.

Q And the earlier troubles? A No, sir.

Q No? A No, sir.

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Q You testified in the last trial, didn't you as to his character? A Yes, sir.

Q Do you remember being asked on cross examination by Mr. Wellman "Q Did you ever hear anything else about him with reference to his troubles? A Well, except youthful-- you might say -- mistake or something like that. Q What were they? A A love affair that is the only thing I know." A yes, sir.

Q What is this love affair that you refer to? A Being too young to get married; he fell in love with a young girl.

Q That was the trouble with his wife? A Yes, sir.

Q That is the love affair you refer to? A Yes, sir; that is the love affair I referred to.

THE COURT: Any other testimony.

MR. WELLMAN: The People have very brief rebuttal. I call Lieutenant Gilligan. (No response).

MR. GOLDZIER: I am willing to concede that he will swear to that.

MR. WELLMAN: It is very important that I have Lieutenant Gilligan here in rebuttal as to what transpired in the station house in contradiction of the defendant. I will try to get him now and in the meantime I will go on with the rest of the rebuttal. Perhaps we can read the testimony given on the last trial.

MR. GOLDZIER: I will consent to that.

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BENJAMIN F. LINN, the complaining witness recalled in rebuttal, testified as follows:

BY MR. WEILMAN:

Q Now, Mr. Linn, you have been here in court, have you not? A Yes, sir.

Q You heard the defendant testify that on the 29th of November, 1911, in the Magistrate's Court, he went to you with a proposition which he said Lynch had put up to him of making a settlement of the case? A That is untrue, sir.

Q And that you said you wanted \$200 in settlement of the case, is that true or untrue? A That is untrue, sir.

Q You have heard him testify, did you not, that you finally agreed to accept fifty dollars in settlement of the loss of all your property, is that true, or untrue?

A That is untrue, sir.

Q And before the Magistrate, you, of your own free will, spoke to the Magistrate, and ^{that} you said to the Magistrate that you had made a settlement of the case out of court, is that true or untrue?

A No, sir.

Q Is there any truth in any of that?

A There is not, sir, absolutely.

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W1.

Q Now, I understood you to say that at the last trial you left immediately after your testimony? A I did, yes, sir, I was excused.

Q So you were not called in rebuttal? A No, sir.

Q That was before the defendant had taken the stand?

A Yes, sir.

Q Was it not? A Yes, sir.

Q As a matter of fact when did you first know that any money had been passed or had been spoken of between Ellis and Lynch in the Magistrate's Court? A On the sidewalk.

Q On the sidewalk at what time? A After the thing was all over.

Q When the arrest was made? A Yes, sir.

Q One question more. You heard the defendant testify that three times he went back and forth between you and Lynch? A Yes, sir.

Q With a certain conversation about money? A Yes, sir.

Q Is there anything in that? A No, sir.

BY MR. GOLDZIER:

Q Did you hear Officer McAvoy testify that at one time just before the withdrawal of this complaint you and Lynch and Ellis were standing together at the door of the Magistrate's Court? A Yes, sir.

Q Is that true? A Yes, sir.

Q What were you doing there when you were standing together?

A Talking.

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Q Was talking about what?

MR. WELLMAN: I object to that.

A I could not say, sir, I could not remember what I said.

MR. WELLMAN: I object to that as having no relation to the question I put.

THE COURT: He said he can't remember.

Q Did you see the officer there at the time? A Yes, sir.

Q McAvoy? A Yes, sir.

Q How near was he to you or to your group? A About fifteen to twenty feet, I should say down the hall.

MR. WELLMAN: Now, we might as well get together on this. I would like to place upon the record, if you have no objection, that Lieutenant Gilligan has been here under subpoena and that, as the officer says, he was here this morning.

MR. GOLDZIER: Yes.

MR. WELLMAN: Now, I offer to read his testimony given at the last trial. It is brief.

THE COURT: It being consented to, of course, you may do so.

MR. WELLMAN: It is consented to. Will you consent that an entry was made of simple assault on the blotter as that would be in line with the testimony?

MR. GOLDZIER: I object to the blotter being considered in evidence.

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MR. WELLMAN: Simply that he would swear that he made that.

MR. GOLDZIER: I will concede that he made the entry, or I will have his testimony read-- either one or the other.

THE COURT: I shall make no direction in the premises. It is for you gentlemen to come to an agreement.

Mr. Wellman then reads the testimony of Thomas F. Gilligan as follows:

"T H O M A S F. G I L L I G A N, called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q Lieutenant, where you on desk duty on the night of the 29th of November, 1911, at the 47th street police station house? A I was.

Q Do you remember the defendant being brought ~~in~~ a man by the name of Linn and a cab driver by the name of Lynch?

A I do.

Q Do you remember a complaint being made there at that time? A Yes, sir.

Q They were brought in by Officer McAvoy? A Yes, sir.

Q Will you state what the complaint was? A There was a charge of assault made against the hack driver.

Q Was anything said that night about a larceny or robbery? A No, sir.

BY THE COURT:

Q Well, who made the charge? A The defendant here

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appeared, coming to the station house as a witness, Linn said--
the man who had been assaulted, -- was intoxicated and he was
not positive as to who had assaulted him but the defendant there
stated that he was present and witnessed it all and the cab
driver, whose name I don't remember, was the assailant, had
assaulted Linn.

BY MR. WELLER:

Q Did Linn say that he didn't want to press the charge?

A No, he said he would gladly press the charge if he knew who
assaulted him, but he said he wasn't sure of this man.

Q He wasn't sure of him and you locked him up on the
technical charge of intoxication? A He was intoxicated, yes,
sir.

CROSS EXAMINATION BY MR. GOLDZIER:

Q You locked him up on the charge of intoxication?

A Yes, sir.

Q You complimented Mr. Ellis upon his having shown
so much spirit? A Yes, sir.

Q Did you inquire of this witness (That is by the Court)
as to the nature of the assault alleged to have been committed
by Mr. Lynch upon Mr. Linn? A Yes.

Q What did the defendant say to you? A He said he saw
him strick him in his face with his fist and also kicked him
when he fell on the street."

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MICHAEL LYNCH, a witness for the People, recalled,
in rebuttal:

BY MR. WELLMAN:

Q You heard the defendant testify, did you not?

A Yes, sir.

Q Did you hear him testify that three times he had gone back and forth between you and Benjamin Linn and that conversations about the acceptance of money in settlement of this case were had? A Yes, sir.

Q Is there any truth in that? A No, sir.

Q You heard him testify that you approached him and asked him if any settlement would be acceptable in the case, or words to that effect, is that a fact or not? A It is an untruth. He approached me.

Q That he went from you to Linn and came back and said that Linn wanted \$200, is that the fact or not? A It is an untruth.

Q That he came back with that news to you and that you said you could only get \$50 and that he went away to tell Linn that? A No, msir.

BY A JUROR:

Q How many children have you got? A Eight living and two dead.

BY MR. GOLDZIER:

Q Did you tell Linn that you had eight children living and two dead? A I told Linn at the time I had seven, there

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was only seven then, one was born three weeks after this
occurrence.

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Q You didn't tell this defendant anything about how many
children you had? A No, sir; never spoke to the defendant
at all until he asked me in the hallway about this money matter.

Q Now, after he had spoken to you didn't he go away from
you for a short time? A No, sir; I went away from him.

Q And left him standing there? A Yes, she was still
standing at the window.

Q For how long were you away from him? A Might have
been a minute and a half or two minutes, something like that.

Q You had a conversation during that minute and a half
with the officer? A Just a word.

Q Just a word? A Yes, sir; "That little fellow asked
me for money".

Q Then you came back again to him? A Well, I didn't make
a hurry up of it; I took my time.

Q You said you left him at the window a minute and a half?
A Yes, probably.

Q And had a conversation? A Yes, sir.

Q And didn't hurry up to come back and you came back
in a minute or a minute and a half? A Yes, sir.

Q Did you leave him again between that time and paying
any money? A No, sir.

Q Then you immediately paid him? A \$20, yes, sir.

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Q \$20? A Yes, sir.

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Q Did you leave him then? A Yes.

Q How long were you away from there? A May be three or four or five minutes.

Q Only three or four minutes? A Yes, sir; that is about all.

Q Now, something was said about \$200 in the first instance.
A Yes, sir.

Q \$50 in the next? A Yes, sir.

Q You mentioned the \$50? A Yes, msir; I told him I thought I could pay him fifty.

Q You mentioned it? A yes, sir.

W I L L I A M Mc A V O Y, a witness for the People, recalled,
in rebuttal:

BY MR. WELLMAN:

Q Officer McAvoy, you heard the defendant testify this afternoon, did you not? A Yes, sir.

Q Did you hear him testify, in effect, that he had three times gone btween Lynch and Linn while Linn was in the complaint clerk's room and Lynch outside in the hall after you had been before the Magistrate the second time? A Yes, sir.

Q Did you have your attention upon Lynch during that time?
A Yes, sir.

Q What is that? A Yes, sir; I did.

Q Can you testify whether or not it is true that the

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defendant made those trips? A No, he didn't go three times
between one another.

Q Did he go twice between Linn and you? A No, sir;
he didn't walk any distance if he did.

Q Well, tell us about that? A If he did walk there
he only walked about three feet, that was between the threshold
of the door and the window.

Q As I understand it, you were watching Lynch at the time?
A Yes, sir; I was.

CROSS EXAMINATION BY MR. GOLDZIER:

Q You say you had your attention upon Lynch during that
time? A Yes, sir.

Q You didn't see any money handed over? A No, sir; I
did not.

Q You didn't see any receipt written? A No, sir; I did
not.

Q Although you watched both? A Yes, sir; I did.

Q Closely? A I watched Lynch.

Q Well, you watched Lynch and you watched the other man
too? A What other man?

Q The defendant? A No, sir; I did not.

Q Wasn't the defendant with Lynch during that time?

A No, sir; he wasn't with him all the time. We were in that
court for eight hours.

Q Then he did walk away from him? A He walked away from
him.

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Q Ellis or Scheckman walked away from Lynch-- and Lynch walked away from Ellis or Scheckman, isn't that so? A Yes, sir.

Q During that time? A Yes, sir.

Q During that time you had your attention upon Lynch?

A Yes, sir.

Q And not upon Scheckman? A Yes, sir.

Q And where Scheckman, you don't know? A I don't know; I had nothing to do with him.

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

Q You were eight hours in court? A Yes, sir; pretty nearly eight hours.

Q These things occupied about eight hours? A From eight in the morning until 3:40 P. M., in the afternoon, that is pretty near eight hours.

MR. WELLMAN: The People rest.

MR. GOLDZIER: The defense rests. I desire to make a motion that upon all the evidence the Court advise an acquittal as to both counts of the indictment.

Motion denied. Exception.

MR. GOLDZIER: I make a motion now that an acquittal be advised as to the first count of the indictment.

THE COURT: Mr. District Attorney, have you anything to say as to which count you would prefer to go to the jury upon?

MR. WELLMAN: I think so, your Honor-- as to the first count, sir, even under the defendant's story

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the People claim that the crime of bribery has been made out by his own statement.

MR. GOLDZIER: He was not about to be called as a witness at all.

THE COURT: We won't go into the merits at all. I wanted to know on what count you desired to have the case submitted to the jury.

MR. WELLMAN: I would ask your Honor to submit both the bribery and the attempted extortion counts.

THE COURT: The Court will deny your motion then so far as it requests that I take away all of the three counts from the jury.

MR. GOLDZIER: All except the third count is taken from the jury?

THE COURT: No, both counts are before the jury. I decline to advise an acquittal upon either count.

MR. GOLDZIER: I desire to understand the Court. What is to go to the jury?

THE COURT: I thought I made it plain. Both the first and third counts are to be submitted to the jury.

MR. GOLDZIER: I take an exception.

THE COURT: Now, have you any other motions?

MR. GOLDZIER: No, sir; not at present.

THE COURT: Do you wish to sum up or will you submit the case?

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MR. GOLDZIER: I want to sum up.

THE COURT: How long do you want?

MR. GOLDZIER: I don't want to be curtailed. I should imagine that it would be better probably to sum up to-morrow.

THE COURT: No, I would like to go ahead as far as I can. How long would you require?

MR. GOLDZIER: Atleast half an hour.

THE COURT: You may proceed not exceeding half an hour.

(Mr. Goldzier closed the case on behalf of the defendant).

The Court then admonished the jury as follows:

Do not talk about the case or permit anybody to talk to you about it and do not form and express any opinion thereon until the case be finally submitted to you.

(The Court then adjourned the further trial of the case until to-morrow, Wednesday morning, March 5, 1913, at 10:30 o'clock A.M.)

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK

Before:

-against-

HON. WARREN. W FOSTER, J.

MURRAY SCHECKMAN.

and a jury.

-----X
New York, March 7, 1913.

A P P E A R A N C E S.

FOR THE PEOPLE: ASST. DISTRICT ATTORNEY ALLAN R. WELLMAN.

FOR THE DEFENDANT: MR. CHARLES GOLDZIER.

Peter P. McLoughlin,

Official Stenographer.

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PEOPLE vs. SCHECKMAN.

New York, March 5, 1913.

TRIAL RESUMED.

THE COURT: I am just informed that the foreman of this jury was taken sick last night. A specialist has been called and he may be able to return on Friday morning. You are excused until Friday morning. I will then advise you, gentlemen as to what we will do. You will not talk about this case nor permit anybody to talk with you about it nor form or express any opinion thereon.

The jurors were then excused, and the case adjourned until Friday, March 7, 1913. at 10.30 o'clock.

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MR. GOLDZIER: We are ready to proceed under an understanding that I had with the District Attorney yesterday if the Court coincides.

THE COURT: It was suggested yesterday. Now, Mr. District Attorney you have the case of Murray Scheckman. Eleven jurors are here. The twelfth juror is ill. I suggested yesterday that you ascertain the condition of the foreman of the jury. What have you ascertained?

MR. WELLMAN: Your Honor, I telephoned to the foreman's wife, and I learned, from her, that the other day when Mr. Marvin, the husband, left the court he was suffering from great pains in his head; that as soon as he arrived home abscesses burst in each of his ears and it was necessary to summon a physician, and that his condition, yesterday was rather critical; he had a high fever and that the doctor was unable to state how soon he would be able to attend court; that in all probability it would not be for a couple of weeks or perhaps more. Under these circumstances I would suggest to your Honor that an agreement and stipulation between Mr. Goldzier and myself which we have talked over be adopted, namely, that the jury be called, and when the foreman does not answer to his name the trial be declared a mistrial as far as it has gone; that the eleven jurors be re-sworn and remain in their same places in the jury box and that

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a new juror to be known as Juror No. 1, be empanelled and sworn to take the place of Mr. Marvin; that the testimony taken heretofore be read. The direct examination by myself and the cross examination by Mr. Goldzier and so on through the testimony to the entire jury including the new juror; and that then both side will have the right to sum up and your Honor will charge the jury in the usual manner.

THE COURT: Is that agreed to?

MR. GOLDZIER: I understand that the motions are to be the same as they appear upon the minutes and considered as made upon the new trial -- the same as made upon the former trial.

THE COURT: You will read the record I suppose?

MR. WELLMAN: All except the motions and those will be considered the same and disposed of in the same way.

MR. GOLDZIER: And an exception. I agree to that.

THE COURT: Have you a written stipulation?

MR. WELLMAN: No, sir.

THE COURT: Place it on the record. I intend to put the question to the defendant. Follow the form in the Toledo case.

MR. WELLMAN: There was no stipulation there. It was abandoned I believe. The idea of a written stipulation was abandoned.

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THE COURT: Well, whether in writing or on the record does not matter; one is equivalent to the other. Now, I understand that you agree to this proposition? The proposition is this: That owing to the absence of one of the jurors there must be a mistrial of the case, and your counsel and the District Attorney and I assume you, yourself, wish to save time and wish to try the case before the same jurors, the same eleven, as far as possible, is that right?

THE DEFENDANT: Yes, sir.

THE COURT: Now, the only way you could do that under the law, is to excuse the whole jury and empanel a new jury; then you leave these eleven men in the box who have heard it and select the twelfth man for the jury. Is that your wish?

THE DEFENDANT: Yes, sir.

THE COURT: Very well, Mr. Spinney, you will note the absence of the foreman of the old jury. We will declare the old trial a mis trial and it now becomes necessary to empanel a new jury in the case of this defendant. The defendant expresses himself as entirely satisfied with the eleven men who are in the box, is that right?

THE DEFENDANT: Yes, sir.

THE COURT: Very well then, we will draw another talesman for the first seat.

(The clerk calls the name of Juror Henry Marvin -- no response).

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(The other jurors responded to their names.)

W A L T E R B. B R O W N, a juror, examined by Mr. Wellman.

Q What is your business? A Bank teller.

Q Have you ever been a juror in a criminal case before?

A Yes, sir.

Q Not this Term here, have you? A No, sir.

Q Have you sat in this court during a part of the trial of this case? A Monday morning until we were excused.

Q You have not formed or expressed any opinion as to the guilt or innocence of this defendant? A No, sir; I know nothing about it.

Q Do you feel that you could sit impartially, listen to the testimony as read by Mr. Goldzier and myself and decide this case upon the facts -- the testimony as read.

MR. GOLDZIER: I assume I have the same number of challenges?

THE COURT: We are starting a new trial.

Q You feel that you could do that, and reach a verdict without having seen the witnesses? A Yes, sir.

BY MR. GOLDZIER:

Q Have you been in court when this case was tried or during any part of the trial of this case? A No, sir.

Q You haven't heard anything about this case from any one? A No, sir.

MR. GOLDZIER: We will excuse the first juror. I assume I have the same number of challenges.

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THE COURT: Yes. The old trial is at an end, and now we are starting a new trial.

HENRY BREITENBACH, a juror, being examined;
BY MR. WELLMAN:

Q You were called as the first juror in this case before? A Yes, sir. I will tell you right now that I formed an opinion, and there is no use putting me in the box now.

(The juror was excused.)

WESLEY M. LAWRENCE, a juror, examined.
BY MR. WELLMAN:

Q As I understand it you won't be able to be here Monday? A I have to leave Monday night.

Q We will be finished before that time, A As long as it is understood that I can leave Monday evening.

Q Have you heard any part of the case? A No, sir; I have not.

Q You have not seen the witnesses on the stand before? A No, sir.

Q I presume you have not formed any opinion as to the guilt or innocence of this defendant? A No, sir.

Q Have you sat as a juror in a criminal case before? A No, sir.

Q In any kind of a case? A No, sir.

Q Have you lived in New York all your life? A About twelve years.

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Q How was it you were not ever called on your duty?

A I don't know.

Q What is your business? A Advertising.

Q Do you feel that you could sit here, have the testimony read from the record as it was taken from the witnesses on the prior trial, and reach a verdict upon the testimony as read? A Yes, sir.

Q You don't feel that necessarily you would have to see the faces of the witnesses understanding the difficulty under which we labor here? A Yes, sir.

The juror was declared acceptable, and then the whole jury was duly sworn.

Now, gentlemen, you have a new jury sworn. I understand it is your wish, and the defendant's wish that instead of calling the witnesses you read the testimony which those witnesses gave on the former trial?

MR. GOLDZIER: Yes, sir.

THE COURT: That is your wish, is it, Mr. Defendant?

THE DEFENDANT: Yes, sir.

THE COURT: I see no objection to your reading, under proper stipulation, the testimony given by the witnesses on the former trial instead of examining those witnesses and taking their testimony. Enter the proper stipulation of record, and then you may proceed.

MR. WELLMAN: It is agreed -- stipulated and agreed by and between the People of the State of New York represent-

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by by Allan R. Wellman, Deputy District Attorney, and the
defendant in person represented by Charles Goldzier as
counsel and representative that the testimony taken
in this case before the Hon. Warren W. Foster commencing
March 3, 1913 be read to the jury with the same
force and effect that it would have if the witnesses
were called and examined. It is further conceded that
the transcript of the stenographer's minutes may be
read as a correct transcript and that it contains
the testimony which was given upon that trial, subject
to correction as made at the time of the reading
be agreed to.

MR. GOLDZIER: All motions appearing upon said
minutes to be considered made at this present time and
made a part of this record and all objections and exceptions
as appearing upon the minutes to appear as objections
and exceptions taken at this trial, whether
read or not.

MR. WELLMAN: It is further stipulated that the
opening on behalf of the People commencing at the last
paragraph of page 3 of the record would be words "The
facts are these" shall be read from the transcript of
the minutes by the foreman to himself down to and including
the words "attempted extortion".

I think, your Honor, that there should be a direction
to exclude the witnesses from the court.

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THE COURT: Very well. The witnesses in this case in the court room will step outside.

Mr. Wellman reads the direct examination of the witness Benjamin F. Linn and Mr. Goldzier the cross examination.

Mr. Wellman reads the direct examination of the witness Michael Lynch and Mr. Goldzier reads the cross examination up to a certain point.

(The Court then admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure, and takes a recess until two o'clock.)

AFTER RECESS.

The reading of the testimony was resumed and concluded at 4 p.m.

THE COURT: Well, gentlemen, that concludes your case.

MR. GOLDZIER: The minutes do not seem to indicate whether I made a separate motion to take from the jury the second count of the indictment.

Motion denied; exception.

(A motion to advise the jury to acquit is denied.)

Exception.

The Court then admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until Monday morning, March 10, 1913 at 10.30 o'clock.

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New York, March 10, 1913.

TRIAL RESUMED.

MR. GOLDZIER: closed the case on behalf of the defendant.

MR. WELLMAN closed the case on behalf of the People.

During the closing of Mr. Wellman Mr. Goldzier objected to a statement by the Assistant District Attorney in relation to the defendant's treatment of his wife.

MR. GOLDZIER: I object to that because that is no evidence of a crime.

THE COURT: It is a mere scintilla, the jury will regard the proof and not the comment of the District Attorney. Whatever evidence there is touching that fact they may consider it.

MR. GOLDZIER: I take an exception to your Honor's ruling.

THE COURT: I do not assert that that is the nature of the evidence nor do I state what inferences are to be drawn from the evidence. There is something in the case, and, therefore, I am not justified in stopping the District Attorney in his comments.

MR. GOLDZIER: I take exception to that refusal of the Court to stop him and to the ruling of the Court

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and the language of the Court upon that matter.

MR. WELLMAN: I will read from page 166. "BY Mr. Goldzier" (his own counsel) Q. What was your trouble with your wife in the first instance. Let us hear what it was" Then the defendant said "Well, she claimed that" now then he interrupts him when he sees what is coming, and says "Now what did you claim", and I said "let him answer", and the Court said "you have asked him a question", and I said "you claimed what" to the witness, and the witness said "she claimed that I wanted to force her to go out on the street, and you remember I asked him whether he had not begged her off before she came down to the Grand Jury so that she would go back on the story and he would not be indicted. Now that he is really in trouble he goes back to his wife. He has denied that he took \$59 worth of samples.

MR. GOLDZIER: I object to that. There is no evidence that such a thing occurred.

MR. WELLMAN: I said he denied it.

THE COURT: My instruction to the jury is that they give regard to the evidence and that alone.

MR. WELLMAN: He denied that he took two dresses from Schlessel.

MR. GOLDZIER: I object to that.

Same ruling; exception.

MR. GOLDZIER: I object to the statement that the

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Magistrate wasn't called --

MR. WELLMAN: Why didn't you call him?

THE COURT: I simply repeat my caution to the jury. Now, Mr. District Attorney, under what precise section of the Penal Code do you wish to go to the jury. If you will be good enough to look at your Code and let me know I will be obliged.

MR. WELLMAN: Sections 379 and 850. I ask your Honor to charge attempted extortion under 850.

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THE COURT'S CHARGE.

FOSTER, J. Gentlemen of the jury: You have taken an oath a true verdict to find in accordance with the evidence. Keep the words of that oath in your minds always. You are not here to see that justice is done, to see that the defendant is fittingly punished, if punishment shall be meted out to him, not here to save him from punishment if you think that he ought not to be punished. You are here to determine the questions of fact submitted to you in accordance with our legal procedure. All questions of fact in a criminal action are left to the jury to determine. Your duty then, is to answer the question submitted to you is the defendant guilty, and to find him guilty if the evidence proves, beyond a reasonable doubt his guilt or to acquit him otherwise. If you let the question of whether or not the defendant ought to be punished come into your minds and control your deliberations you are, are you not violating the oath that you have taken. Powerful is the jury. Indeed there is no office within the gift of man more powerful than the office of a jurymen. Their power is absolute. They are bound by the law just as the Judge is bound by the law. This trial is taking place under the law, and you, and each of you, and I participate in it, each one having his duty

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to perform. You are to weigh this testimony in the light of reason, using your own good common sense to determine the truth, determine how much of the testimony of each and every witness is worthy of belief, and to determine, likewise, what of the testimony ought to be rejected. You have seen each and every one of the witnesses. You know if some of those witnesses have motives and reasons to lead them to stretch their testimony, to make it favorable or unfavorable to this defendant. It is for you, in the light of those reasons to weigh the testimony, and to determine how much credence to give to the testimony of such witnesses.

The defendant is charged with bribery, and the law says that:

"A person who is about to be a witness upon a trial, hearing other proceeding before a court, or before an officer authorized to hear evidence or take testimony who receives or agrees or offers to receive a bribe upon any agreement or understanding that his testimony shall be influenced thereby or that he will absent himself from the trial, hearing or other proceedings is guilty of a felony."

So that, first of all, you are to determine whether or not the defendant is guilty of bribery. It has been shown, the People claim, by the evidence that a proceed-

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ing was pending in a court of competent jurisdiction; that the defendant was a witness thereafter. Now, did this defendant, about to be a witness upon a trial, receive or agree or offer to receive a bribe upon the understanding or upon the agreement that his testimony would be influenced thereby or that he would absent himself from the trial and would not give testimony. If he did he is guilty of bribery, if he is not he should be acquitted of that charge.

If not guilty of bribery then you are to determine whether the defendant is guilty of ^{an} attempt at extortion. Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

Fear such as will constitute extortion may be induced by an oral threat to accuse him or any relative of his, or any member of his family, of any crime, or to do an unlawful injury to the person or property of the individual threatened or to any relative of his or to any member of his family.

An attempt at extortion is an act done with the intent of committing extortion and tending to commit extortion yet failing to complete the crime of extortion.

Perhaps I can make that more plain by an illustration gentlemen. If, Mr. Foreman, I put my hand in your pocket

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ket intending to steal your purse, you discover it and arrest it, stop it. I have not stolen your purse, it is true, but with the intention of stealing your purse I have done an act, to wit, put my hand into your pocket and that act tends to complete the crime and is an attempt. An attempt itself is a crime, and it is punishable by one-half the imprisonment that follows the completed crime.

The people claim that if no other crime is made out against the defendant certainly they have made out the crime of attempted extortion. So that, if you believe that this defendant did an act with the intention of extorting money, and yet failed of accomplishment, and that the act tended and was done with the intention of committing extortion you may find him guilty of attempted extortion. I repeat to you extortion is the obtaining of property from another with his consent induced by a wrongful use of force or fear under color of official right, and the fear such as will constitute extortion may be induced by an oral or written threat to do an unlawful injury to the person or property of the individual threatened or to any relative of his or any member of his family or to accuse him or any relative of his or any member of his family of any crime. It is for you to weigh all the facts and cir-

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cumstances in the case having seen the witnesses, being familiar with them and with the testimony which they gave, and to determine the truth here. If the defendant is guilty find him guilty either of bribery or attempted extortion, and if not guilty acquit him.

MR. GOLDZIER: I desire to except to the Court's charge that a proceeding was pending at the time.

THE COURT: I don't think that I stated that a proceeding was pending, it is for the jury to find all questions of fact, and it is not for me to state the fact. I think I stated that the District Attorney claimed to have proved that fact. It is for you to find the facts and not to accept my statement.

MR. GOLDZIER: I except to your leaving it to the jury to determine whether a proceeding was pending.

THE COURT: Yes.

MR. GOLDZIER: Now, I have several requests to charge. Shall I read them to your Honor?

THE COURT: If you wish me to charge them.

MR. GOLDZIER: First: If the understanding between the defendant and Lynch was that the charge of a crime theretofore made was not to be prosecuted, or was to be withdrawn upon the payment of some money, that is not sufficient to establish the crime of extortion.

THE COURT: Yes, I charge that. I have already de-

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fined the crime. You will remember my definitions, gentlemen.

MR. GOLDZIER: Second. The defendant cannot be convicted of the crime of bribery unless the understanding between him and Lynch was that upon the payment of money he would falsely testify when called as a witness.

THE COURT: Well, that is not strictly accurate. If there was an understanding that in any respect his testimony should be influenced by the money then he is guilty.

MR. GOLDZIER: I except to the refusal to charge and to the modification of the charge.

I ask your Honor to charge, third, that the crime of bribery is not established unless at the time when the money was received the defendant expected to be called as a witness in a criminal prosecution.

THE COURT: Yes.

MR. GOLDZIER: Fourth. If the jury believe that Lynch was guilty of the assault charged by the defendant they may disbelieve his testimony except in so far as it is corroborated by other witnesses.

THE COURT: Well, gentlemen, that is an ingenious way of saying that it is within your province to believe ^{such} witnesses as you believe worthy of belief. That is the law.

MR. GOLDZIER: Fifth. If the jury disbelieve the

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testimony of Lynch the defendant cannot be convicted of either of the counts of the indictment.

THE COURT: I don't know that I can say that.

Exception.

THE COURT: It is for the jury to determine the facts.

Exception.

THE COURT: And not for me to tell the jury.

Exception.

MR. GOLDZIER: Sixth; If the jury believe that the money was paid by Lynch to the defendant either for the purpose of influencing his testimony --

THE COURT: Have I not covered all these points in my charge in submitting the question to the jury. Do you think that these requests of your tend to clear their minds or clarify the question submitted.

MR. GOLDZIER: No, sir, but they may upon appeal tend to reverse the judgment.

THE COURT: Yes.

MR. GOLDZIER: I am taking them now for the purpose of a possible appeal.

THE COURT: No doubt about that.

MR. GOLDZIER: I want to preserve my rights in any event.

THE COURT: I imagine the jury may not pay much attention to them, after what you have said.

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MR. GOLDZIER: If the jury believe that the money was paid by Lynch to the defendant for the purpose of influencing his testimony then he is an accessory to the crime, and the jury cannot convict upon his testimony.

THE COURT: Yes.

MR. GOLDZIER: If the jury believe the testimony of the defendant no conviction can be had on either count in the indictment.

THE COURT: Yes.

MR. GOLDZIER: The jury cannot convict on both counts of the indictment.

THE COURT: Well they can, but I advise them not to.

MR. GOLDZIER: I take an exception to the refusal of your Honor to charge that request.

MR. GOLDZIER: Ninth. There is no evidence before the jury of any attempt on the part of the defendant to force or ask his wife to become a prostitute.

THE COURT: Well, now, the jury heard the evidence, any why should I tell them that there isn't any such evidence. They have heard whatever there was, and they will give to it the credence that it ought to have.

MR. GOLDZIER: I except to the refusal of the Court to so charge.

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THE COURT: I am not here to tell the jury what the evidence is. They have heard the evidence, they will hearken to it, weigh the evidence and determine its credence.

MR. GOLDZIER: I except to the modification and refusal.

I ask your Honor to charge that the fact that the defendant's wife made a charge before the Grand Jury is not to be taken as any evidence of such an offense.

THE COURT: Yes.

MR. GOLDZIER: The jury is to consider the evidence of the defendant's witnesses as to his good character.

THE COURT: Yes.

MR. GOLDZIER: In order to convict the jury must find beyond a reasonable doubt that in demanding and receiving the money the defendant had a criminal or felonious intent.

THE COURT: Yes.

MR. GOLDZIER: The conviction of the defendant as a disorderly person for failure to support his wife is not a conviction as for a crime.

THE COURT: Yes.

MR. GOLDZIER: A conviction as a disorderly person for failing to support may be had even though the person convicted is unable, though willing to support his family.

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and does not necessarily involve a charge of moral turpitude.

THE COURT: Yes, that is like the flowers that bloom in the Spring.

MR. GOLDZIER: If the defendant having accused Lynch, of a crime in consideration of the payment of money merely agreed not to continue such prosecution the jury cannot find him guilty of the crime of extortion.

THE COURT: Now, gentlemen, there are two crimes charged here, the first is bribery. A person who is about to be witness upon a trial, hearing or other proceeding who receives or agrees or offers to receive a bribe upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing or other proceeding is guilty of a felony, to wit, bribery. That is the ^{first} count in the indictment, and the first crime which you are called upon to determine. The second count is that of attempted extortion which I have already defined and over defined to you.

(The jury retire at twelve o'clock.)

(The jury return to court at 1.15 p.m.)

THE CLERK: Have you agreed upon a verdict?

THE FOREMAN: Not yet.

THE COURT: I have received a communication from you reading as follows: If the jury believe that Lynch

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is a robber, and therefore discredit his testimony then they still find the defendant guilty.

If you believe that Lynch is a robber you do not necessarily have to discredit his testimony. The fact that he was guilty of the other crime, if he was guilty of it, does not destroy his testimony, but it for you, in your sound judgment, to believe it if you think it worthy of belief, and to reject it if you think it unworthy of belief. It affects his credibility in so far as you gentlemen think it ought to affect his credibility. So that it is for you, on all the evidence, giving the weight to the evidence of Lynch you think it ought to have, or neglecting it if you think so, to determine whether, from all the credible evidence in the case, the defendant's guilt has been proved.

MR. WELLMAN: I ask your Honor to charge the jury that if they believe Linns' denial that he authorized the defendant to make any settlement they may take that into consideration even if Lynch was the robber.

THE COURT: You may take all the evidence, gentlemen. I won't tell you what you may believe. It is for you to determine what you think you ought to believe and reject what you think you ought not to believe.

The jury return to court at 1.25 p.m.

THE COURT: It appearing that the defendant's counsel is not present, but his secretary or clerk is present,

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and that there is no lawyer in court, though the court has sent an officer into the corridor of the court house to see if he could find any, to act for the defendant, and failing to find any lawyer, and being informed that there is none in the corridor nor about the court house, the Judge directs that the verdict be taken.

The jury return a verdict of guilty of attempt at extortion as charged in the third count of the indictment with a recommendation to the mercy of the Court.

THE COURT: Reserving all the defendant's rights I remand him until Friday.

(Defendant remanded.)

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

MURRAY SCHECKMAN.
-----X

Indictment filed January 25, 1912.

Indicted for bribery and so forth.

(The defendant being arraigned for sentence before
HON. WARREN W. FOSTER, J., New York, March 14, 1913.)

APPEARANCES.

FOR THE PEOPLE: ASST. DISTRICT ATTORNEY ALLAN R. WELLMAN.

FOR THE DEFENDANT: MR. CHARLES GOLDZIER.

MR. GOLDZIER: Now, may it please the Court in this
case I desire to make a motion for a new trial on the
ground that the verdict of the jury is against the law and
that under the charge of the Court the jury was found to
acquit the defendant of the crime of attempted extortion.

THE COURT: That was a matter for the jury.

MR. GOLDZIER: I made certain requests to charge,
which your Honor did charge, and under which the jury,
necessarily had to acquit. I want to call your Honor's
attention to that.

THE COURT: If you made such requests as that, and
I charged them, then the jury did not understand them nor
I did not. I did not intend to do that.

MR. GOLDZIER: If they were not charged I would
have been entitled to an exception. But as I understand
it your Honor did charge those requests. If the understand-
ing between the defendant and Lynch was that a charge of crime

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therefore made was not to be prosecuted or was to be withdrawn,
upon the payment of a sum of money, this was not sufficient
to establish the crime of extortion.

THE COURT: Who prosecuted this case?

MR. WELLMAN: I did, your Honor.

THE COURT: What is there to this point?

MR. WELLMAN: I cannot see anything to it, your
Honor.

THE COURT: I don't think I told this jury to ac-
quit your client. I did not intend to do it. I intended
leaving them to determine whether he was guilty or not guilty,
and I think I did.

MR. GOLDZIER: Under that charge there was nothing
for them to determine, as your Honor did charge them. I want
to call your Honor's attention to --

THE COURT: I make mistakes, I am but human.

MR. GOLDZIER: The jury was bound by the charge that
was made, and I didn't have a chance to take an exception so
as to raise the point on appeal.

THE COURT: I will give you an exception.

MR. GOLDZIER: Now I want to call your Honor's
attention to another fact. Your Honor charged upon my re-
quest, that is they disbelieved Lynch they could not convict.
While I was away the jury came in for instructions, and ask-
ed the question whether if they disbelieved Lynch they could
convict and your Honor refused to repeat that charge, and

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I say that this is error. I feel that I should have a new trial. Of course, I don't know this of my own knowledge. I had an important engagement, and I did not expect that this jury would come back for about two or three hours. I expected a disagreement because I never got an agreement of the jury in my favor in the first instance anyway. And I make a record for appeal in every case. Now in this case I tried to win before the jury because I was sick and tired of the case having spent forty days in court upon this case, and I didn't want any appeal. I didn't want my client's money for an appeal because he can't afford it. Now, when this case was tried, under the first indictment, before Judge Rosalsky I made this point that I make now. I did not urge it before the Court because in my experience of forty years I have been told that the Trial Courts do not sit here to listen and determine upon points of law and we have to take them to the higher courts. I have taken them to the higher courts and have been somewhat successful. Now when I stated this point before Judge Rosalsky that an accusation of crime had been actually made to a Magistrate who could prosecute the crime and if all that my client did for the money was to agree not to further prosecute that extortion was not in the case. Judge Rosalsky saw my point immediately, and after an hour's argument by the District Attorney the Judge directed the jury substantially, to acquit.

THE COURT: And you say I did the same thing?

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MR. GOLDZIER: Your Honor did. You could not help yourself. The facts were such you could not help yourself.

THE COURT: I may say that if Judge Rosalsky saw it so clearly I am sorry that he did not make an end of the case there and then.

MR. GOLDZIER: I am sorry too.

THE COURT: I shall grant you the extension which you ask.

MR. GOLDZIER: Judge Rosalsky naturally thought I liked to go up on appeal, and thought it was a good thing to get me to appeal and establish the point of law. Now for that purpose he did not direct the jury to acquit. This subsequent indictment was found with the other counts because Judge Rosalsky convinced the District Attorney that they could not convict for extortion as he was convinced himself. Now, under the circumstances, I trust that my motion for a new trial will be granted, and I think, with all due respect to the Court, I feel rather harshly treated in this case because I think if I had been here when the jury asked for instructions your Honor would have necessarily repeated the instruction which you had previously given to them, and which the jury had conveniently forgotten.

THE COURT: When the cats are aware--

MR. GOLDZIER: I am not so much of a cat. Of course I was away.

THE COURT: I deny your motion.

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MR. GOLDZIER: I take an exception to the denial of the motion. Now his wife is here in court, the lady who made the charges against this man which undoubtedly influenced the jury in this case. I ask that your Honor call the wife up and have her state the truth no matter whether it hurts my client or not.

THE COURT: What would the wife say?

MR. GOLDZIER: She will say that this charge was untrue, that the man was drunk at the time when he made the suggestion, and that she told the grand jury so.

THE COURT: There is no suggestion on her part that she perjured herself, is there?

MR. GOLDZIER: What is that?

THE COURT: That she gave perjured testimony on this trial?

MR. GOLDZIER: No, sir.

THE COURT: I shall not regard it on the matter of sentence.

MR. GOLDZIER: Of course, the jury recommended this man to the mercy of the Court, and I think that the only mercy that can possibly be shown to him is by a suspended sentence. I think that would be the best that could be done for this boy.

THE COURT: I have given you an exception, and I do not require to see the wife.

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MR. GOLDZIER: I wish, sir, that her story be told that the statement that this defendant induced her to lead an immoral life for his benefit is false and untrue.

THE COURT: I shall assume that.

MR. GOLDZIER: The jury did not assume that.

THE COURT: Very well, I shall not in the imposition of the sentence. Scheckman you have been tried, ably defended and convicted. It remains with me to dispose of your case with a reasonable sentence. The crime of which you stand convicted is bargaining with justice, offering to stop a prosecution for pay, an insidious and dangerous crime, and one, it seems to me which requires to be punished. The jury have recommended mercy, and that mercy I will show by not sending you to State prison, but rather by sending you to Elmira Reformatory where you will be given a trade and an education, and I hope be benefitted thereby.

MR. GOLDZIER: Will your Honor grant a certificate of reasonable doubt which Judge Rosalsky volunteered to do on the first trial. The jury did not convict on the first trial and Judge Rosalsky hadn't a chance to grant a certificate of reasonable doubt.

THE COURT: I hardly feel like granting a certificate

MR. GOLDZIER: Very well. Then I ask your Honor for a few days--

THE COURT: Do you know of any reason why I should grant the certificate?

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MR. WELLMAN: I know of no reason, your Honor. The old indictment about which there was some difficulty was superseded by the new indictment.

MR. GOLDZIER: That he was convicted upon the crime which was charged in the first indictment, and as to which there was a doubt, and not of the other crime.

THE COURT: It seems to me that the defendant had a perfectly fair trial, and I do not recall any question of law before me that seemed to me to be involved in doubt. I am disposed to dispose of the case today.

MR. GOLDZIER: Will your Honor give directions that this man be kept here for a few days so that I can go to the Supreme Court for a certificate.

THE COURT: How long do you want?

MR. GOLDZIER: About four or five days.

THE COURT: Next Thursday, the 20th. (Elmira Reformatory).

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