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I N D E X

| | Direct | Cross | Re-Dir. | Re-Cross |
|------------------|--------|-------|---------|----------|
| William Leichter | 2 | 3 | 8 | 9 |
| John W. Finn | 9 | 10 | | |
| Abe Kaplan | 23 | 26 | | |

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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART III.

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

-against-

: HON. JOSEPH F. MULQUEEN, J

ABRAHAM KAPLING alias
ABE KAPLAN.

: and a Jury.

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New York, May 7, 1915.

INDICTED FOR GRAND LARCENY IN THE SECOND DEGREE AND RE-
CEIVING, AS A SECOND OFFENSE.

INDICTMENT FILED MARCH 22, 1915.

A p p e a r a n c e s :

JOHN H. MINTON, JR., Assistant District Attorney,
for the People.

A. K. ROSENBERG, ESQ., for the Defendant.

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A jury was duly impaneled and sworn.

MR. MINTON: It is conceded by the defendant that
heretofore, on the 7th day of March, 1914, in the Court
of General Sessions of the Peace, before the Honorable
James F. Malone, a Judge of the said Court, the said
Abraham Kapling, otherwise called Abe Kaplan, under
the name of Abe Kaplan, was in due form of law convicted
of a felony, to wit, grand larceny in the second de-
gree, upon indictment then and there pending in the
said Court against him, and sent to the Elmira Reforma-
tory and served a sentence.

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MR. ROSENBERG: That is right.

L I L L I A N L E I C H T A G , was called as a witness on behalf of the People, being first duly sworn, testified as follows:

(I reside at 303 Avenue St. John, Bronx)

DIRECT EXAMINATION BY MR. MINTON:

Q How old are you, Miss Leichtag? A Sixteen.

Q And you are a schoolgirl? A Yes, sir.

Q Where do you go to school? A Washington Irving High School, 14th Street.

Q Do you remember being in the subway on the 9th of March? A I don't remember the day.

Q Do you remember the day something happened in the subway to you? A Yes, sir.

Q The day that a man was arrested? A Yes, sir.

Q Now what time were you in the subway? A About 6:30

P. M.

Q What station? A The Grand Central.

Q On the uptown or downtown side? A Uptown.

Q Did you have any money with you? A Yes, sir.

Q How much? A Five cents.

Q And what did you have it in? A A little silver purse.

Q Is that the little silver purse (showing)? A Yes.

Q What pocket did you have it in? A Right hand pocket.

Q Will you please stand up. (The witness stood up)

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Q You had another coat on? You have not the coat with you today? A No.

Q What kind of a coat was it? A A winter coat.

Q And did it have side pockets? A Yes, sir.

Q And in which pocket was this (showing purse)? A The right hand pocket.

Q Now were you waiting for a local or an express train?
A I was waiting for an express.

Q Now what happened? A As I was standing and waiting for the express train, the detective grabbed me, and he pulled out the purse and he asked me if it was mine and I identified the purse, that was all.

Q When the detective grabbed you did he have a purse in his hand? A Yes, sir.

Q And did he have anybody else? A Yes, sir.

Q Who did he have? A This boy.

Q The defendant? A Yes, sir.

Q By one hand -- had you seen the defendant before that?

THE COURT: Not of your own knowledge. You did not pay any attention to him?

THE WITNESS: No, sir, I was going into the train.

Q You hadn't noticed the defendant before that? A No.

Q Not until he held out this purse to you? A Yes.

CROSS EXAMINATION BY MR. ROSENBERG:

Q The first thing you knew about anything wrong was when the detective showed you the purse? A Yes, sir.

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Q Up to that time you didn't have any suspicion that anything was missing from your pocket? A No.

Q Up to the time that detective Finn showed you your purse you had no suspicion you lost anything? A No.

Q You didn't feel anybody else feel your pocketbook?
A No, sir.

Q You didn't feel anybody take it out from your pocket --

THE COURT: How is that material? She has already said that she had no suspicions of anyone.

Q Now at Forty-second Street in the subway you were waiting for an express, is that right? A Yes, sir.

Q Now how tall a girl are you (the witness stood up).
Do you know how tall you are? A About five feet.

Q And you weigh about how much? A I weigh 105 lbs.

Q Now in the subway at the place where you were standing there were a great many people around you? A Yes, sir.

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

Q Were there a great many people around you? A Yes, sir.

THE COURT: She said there were. What is the use of going into all that.

Q And were they tall people around you? A Quite tall, taller than I.

Q And you were sort of bunched in among those large people? A yes, sir.

Q It was pretty crowded where you were? A Yes, sir.

Q The station was jammed, wasn't it? A Yes, sir.



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Q Now did you see Detective Finn before he showed you the pocketbook? A No, sir.

Q Now where were you when the detective spoke to you with respect to the entrance to the subway car?

THE COURT: Do you understand that question? Where were you when the detective, as you say, showed you your purse?

THE WITNESS: Another man.

BY THE COURT:

Q Were you on the car or off the car? A Off the car.

Q Had you been on the car at all? A No, just stepping on.

Q When the officer showed it to you? A Yes, sir.

BY MR. ROSENBERG:

Q And as the uptown express train reached 42nd street you were about to get in? A Yes, sir.

Q So there were a number of people in front of you?

A A few people, there were people around me.

Q There were a number of people in front of you going into the car? A Yes, sir.

Q And a number of people back of you? A Yes, sir.

Q Each side of you? A Yes, sir.

Q And all jammed going in? A Yes, sir.

THE COURT: She said that over and over again. She said she knows nothing about the case, and that that (indicating) is her pocketbook and the officer handed it to her.

BY THE COURT:

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Q You did not give the pocketbook to this defendant?

A No, sir.

Q You did not tell him to put his hands in your pocket?

A No, sir.

Q And you and the detective did not make it up and charge him with it? A No, sir.

THE COURT: Mr. Rosenberg, you have no right to cross examine about the crowd over and over again. Our time is valuable.

BY MR. ROSENBERG:

Q Before you got to the point where you were about to enter a car, didn't you pass through a crowd of people?

A No, sir.

THE COURT: I will exclude that as repetition.

MR. ROSENBERG: To which the defendant objects.

THE COURT: Yes. She has already told you that there were people on all sides of her, that there was a crowd, and most of them were bigger than she is.

MR. ROSENBERG: I am talking of the time before she reached that place.

THE COURT: She said the subway was jammed. It could not be any stronger than that.

Q Now your coat pocket, where the pocket book was, it was in the outside coat pocket? A Yes, sir.

Q And you could easily put your hand in that pocket, couldn't you? A Yes, sir.

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Q The pocketbook is a square metal pocketbook? A Yes.

THE COURT: Why, that speaks for itself. It is in evidence.

MR. ROSENBERG: It is not yet in evidence.

MR. MINTON: Your Honor, I will offer it in evidence, subject to its being connected.

THE COURT: All I object to is this wasting of time. (The article referred to was received and marked Defendant's Exhibit 1 for identification)

Q Did you have anything else in that pocket? A Yes, sir, I had a note, a piece of paper, with some writing on it, something written on it.

Q How many pages did the note consist of? A Just one.

Q One piece of paper? A Yes, sir.

Q Did you have occasion to put your hand in that pocket to take out the note when you were in the subway? A No, sir.

Q When was the last time you saw the pocketbook before you saw it in the detective's hands? A Before I paid my fare.

Q It was in the ticket office? A Yes, sir.

Q Now at the ticket office when you paid your fare it was quite crowded, wasn't it? A Yes, sir, it was.

Q And you went downstairs to get on the platform, didn't you? A Yes, sir.

THE COURT: And there was a crowd on the platform.

MR. ROSENBERG: I am talking of going down stairs.

Q At the time you were going downstairs, there was a

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crowd there? A Yes, sir.

Q A large crowd, people bumping into you? A I could walk without being bumped into.

Q Because of the crowd you bumped into the people? A A little.

Q And they bumped into you, isn't that right? A Yes.

Q And they bumped into you on the right side? A I don't know which side.

Q Both sides, is that right? A Yes, sir.

Q And there was some bumping and pushing against you while you were on the platform as you were about to get into the car, isn't that right? A Yes, sir.

Q Now do you know how deep your right hand pocket was? A Yes, sir, I could tell you.

THE COURT: How deep?

THE WITNESS: About four inches deep.

REDIRECT EXAMINATION BY MR. MINTON:

Q The note you speak of was inside the little purse?

A No, it was separate.

BY THE COURT:

Q Was the note handed back by the officer to you? A Yes.

MR. MINTON: I offer this note in evidence.

(Received in evidence and marked People's Exhibit No. 2)

BY THE COURT:

Q Anything private in it? A No, sir.

BY MR. MINTON:

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Q Is this the note? A That is the note.

RE-CROSS EXAMINATION BY MR. ROSENBERG:

Q Was the note taken out of your pocket also? A Yes.

Q And the officer gave you the note? A Yes, sir.

BY THE COURT: Everything that was in your pocket was taken out? A Yes, sir.

BY MR. ROSENBERG:

Q Was the note in your pocketbook or separate? A It was separate.

J O H N W . F I M M , was called as a witness on behalf of the People, being first duly sworn, testified as follows:
(Detective Bureau)

DIRECT EXAMINATION BY MR. MINTON:

Q Were you a member of the Detective Bureau on the 9th of March of this year? A Yes, sir.

Q Assigned to what squad? A Pickpocket squad.

Q And about 6:30 that evening where were you? A On the northbound subway station express, at 42nd street.

Q Did you see the defendant there that evening? A Yes.

Q State everything you saw him do? A I first seen the defendant at the extreme north end of the station around six o'clock and he was standing to the side of the station where the local trains come up and the crowd was on the other side of the platform waiting for the express train. I seen him then step away from where he was standing and walk behind a woman who was wearing a coat. He pressed up both sides of the woman

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and then left her and went back and stood in the same place he was first standing.

BY THE COURT:

Q What do you mean -- he pressed up both sides? A He walked up and placed his hand down in her pocket this side (indicating) and then went over on this side (indicating) and placed his hand and walked back and stood in the same position, as I first seen him. Then he walked down fifty feet on the station to where another crowd was waiting for a train, and he mingled in among that crowd. Then walked north again and back again to the same place where this complaining witness was.

MR. MINTON: Stand up, Miss Leichtag.

(the complaining witness stood up)

Q Is that the person you refer to? A Yes, sir. At the extreme end, the north end, the defendant then went up on the left side of her first, then crossed to the right side of her. He placed his hand on her coat where the pockets are, and he took his hand away and stood there. He waited. I was right behind his back^{and} as the express train pulled into the station he placed his hand down in her pocket. Then they all started to crowd to the door and when he pulled his hand from her pocket he walks out, and the girl was still in the crowd. I followed him and grabbed him by the hand and in his hand he had a little purse. I took the purse out of his hand. I said, "Get that little girl," to a couple of citizens there, and they brought her to me. I said, "Little girl, is this

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your purse?" I said, "This man is just after taking it out of your right hand coat pocket."

MR. ROSENBERG: That is objected to.

THE COURT: If the defendant made any reply I will allow the testimony, not otherwise.

THE WITNESS: Yes, sir.

BY THE COURT:

Q What did he say? A He said, "I found it." And afterwards I spoke to the girl. I said, "Did you have a little piece of paper in your pocket?" She said, "I did." I then pulled him back down the station about six or seven feet from where the girl tried to get on the car and this piece of paper was lying just where I had got that purse in his hand. I picked it up. I showed it to the girl. She said, "It is mine." I said, "He also had this in his hand, too."

Q Did you speak about that too? A I spoke about the purse. I said, "Is there any mistake about finding this purse in your hand?" He said, "There is no mistake. I had it in my hand; I found it."

CROSS EXAMINATION BY MR. ROSENBERG:

Q Now, Officer, how long are you on the detective force?

A Twenty-two years, and ten years on the detective force.

Q And this particular squad concerning which you have just testified you have been on since its organization? A Yes, sir, that is my work.

Q How long is that? A Five or six years.

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We have had it since Inspector McCaffrey's time. We are detailed all over the city, Brooklyn and the Bronx.

Q I want to know the length of time, about? A About six or seven years, since Commissioner Bingham's time.

Q Now you recognized the defendant when you saw him in the station? A I didn't know him. I didn't know the man from Adam; I had never seen him before.

Q Now how often have you arrested men for what you call jostling, putting their hands on persons' bodies, prior to this day? A How many have I arrested?

Q Yes? A I have arrested hundreds.

Q Almost a thousand? A I would not say that, hundreds.

THE COURT: It is a very common offense?

THE WITNESS: Yes, sir.

Q Just answer the Judge's question; jostling? A It is all according to the circumstances.

Q Will you please answer the Judge's question: It is quite common to arrest for jostling? A Not all the time.

Q How many times have you arrested persons for what you call jostling? That is, before the date of the arrest of this defendant?

THE COURT: He has already said thousands of times.

THE WITNESS: No, your Honor. Hundreds of times.

Q So when you saw the defendant put his hands on the woman, not the complainant, one on each side of her, did you recognize that as the act of a person jostling a woman? A That is an

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act of jostling but every case has its own circumstances.

Q Didn't you recognize in what you saw the defendant do to that woman that it was a complete case of jostling? A I would not say it, no.

Q Haven't you arrested hundreds of persons for doing exactly the same thing and charged them with jostling or disorderly conduct? A If I knew them to be professional thieves, and they knew me, when I see them place their hands on anybody, even if they don't get any property, I immediately arrest them, but the men that don't know me I allow them to go along until I see true grand larceny instead of jostling.

Q Have you not arrested many people whom you didn't know for jostling? A No, sir.

Q Are you sure of that? A I have arrested several people, men who didn't know me and I didn't know, after I had followed them half an hour or so and saw stealing and I seen them incompetent in their work, I would arrest them and take them to Police Headquarters.

Q What charge did you make against this defendant when you brought him to Police Headquarters? A I charged him with the crime of larceny.

Q Didn't you charge him with disorderly conduct? A No, sir.

Q Sure of that? A I am sure I didn't.

Q The following day you arraigned him in the Magistrate's Court? A Yes, sir.

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Q Did you testify in the Magistrate's Court the following day? A Yes, sir.

Q Did you testify in the Magistrate's Court that you saw him jostling or putting his hands on women other than this complainant?

THE COURT: He may not have been asked about that.

MR. ROSENBERG: I am asking --

THE COURT: There is no inference to be drawn from that. You may show whether or not in answer to questions elsewhere he has made different answers from those he has given here, but if he was not asked about the matter, and if you object I would not allow it in evidence here.

MR. ROSENBERG: It was not asked here. He merely testified --

THE COURT: It was a responsive answer.

Q Did you testify in the Magistrate's Court that you saw this defendant put his hands on a man and do what you call jostling?

THE COURT: I will exclude that as immaterial.

MR. ROSENBERG: Exception.

Q Did you testify in the Grand Jury room that you saw this defendant put his hands on a woman in what you describe as jostling, did you, yes or no? A I can't answer that yes or no. I will answer it in my own way.

MR. ROSENBERG: I object to his statement that he will answer it in his own way.

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Q Did you, yes or no? A I can't say.

Q Will you answer the question before this jury without being specially prompted on that subject? A I answered how long I had him under observation and what I saw him do until the time I saw him placed under arrest.

Q How many times have you testified in the so-called jostling cases? A Hundreds of times.

Q How many times have you testified in the so-called pickpocket cases? A Larceny cases?

Q Yes? A Hundreds of times.

Q And you know what is necessary to charge a defendant with? A Yes, sir.

Q Now, how tall a man are you, Mr. Finn --

THE COURT: If you can show that he was asked that question and gave a different answer, I will allow it, but the Magistrate has not anything to do with this court. The Magistrate has no jurisdiction in a charge of felony. He simply affords the defendant an opportunity to show that the charge is not based on any evidence which warrants holding the defendant for any further investigation.

MR. ROSENBERG: But the point is --

THE COURT: I want to explain to the jury that the Magistrate could not have tried this man for felony but that whenever a person is charged with felony the law requires that he be brought before a Magistrate and he is there given a chance to prove whether a mistake has been

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made, and if so he is permitted to go free. Whether the Magistrate sets him free or not is entirely immaterial because the Grand Jury can indict him. Now that is what we are discussing, Grand Jury indictments. There is a rule of law that if a man comes into court as a witness and says one thing, the cross examiner can show that the witness answered the same question differently at another time, whether in court, church, barroom, or in the hall outside, or any other place. That is all, and the failure to make a statement in the Magistrate's Court must not be considered by you when made here as untrue.

MR. ROSENBERG: I would like to take an exception.

THE COURT: Yes. If the witness was not asked concerning it, or his attention not called to it. What we are concerned with here is one definite charge. This girl says she had a pocketbook in her pocket. This officer says he saw the defendant take it out of her pocket. That is all. That is the people's case. If you don't believe it, you will have to acquit the defendant. If you have a reasonable doubt of it, you must acquit the defendant. What the officer said in the Police Court, unless it contradicts some statement he made here, must not be considered by you at all. It is entirely immaterial. You might just as well make a comment on the French and German armies. It would not have any more

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to do with the case than that.

MR. ROSENBERG: I except to that statement, here, particularly as to what the officer stated and did not state, and the object of the examination on this subject.

Q Now, Mr. Finn, in view of the fact that it was brought out that out/in the Magistrate's Court they do not try felony cases, how often have you arrested a man whom you have actually caught taking money off a man, or the pocketbook off a man and charge that man or person with disorderly conduct?

MR. MINTON: I object.

THE COURT: I will exclude that as immaterial. The detective is not on trial. If you want charges against the detective --

MR. ROSENBERG: But your Honor told the jury --

THE COURT: I told the jury the law so that they would not be misled by a specious argument of yours. They must not go outside of the case and must decide the case as I give it to them, and the facts they must take from the witnesses and disregard everything else unless the argument of counsel is based on the evidence or the law in the case as I give it to them.

MR. ROSENBERG: I except to the statement of your Honor, and also the last portion of the statement that the jury must not be misled by any specious argument of mine.

THE COURT: Or of the District Attorney. The jury

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are to accept what the Court says is the law.

You must not take your own judgment of the law. You get the evidence from the witnesses, not from Mr. Rosenberg or Mr. Minton. If Mr. Rosenberg knows anything about the case we shall be very happy to have him testify as to it, if he desires.

Q How far back of the defendant were you when he was in the crowd? A I was standing to the right side of the girl and the defendant. They were on the north end of the station and I was standing further north on the station and the girl's pocket, the right side, and I was standing right to them.

Q The girl was standing, then the defendant, and then you were standing? A The defendant was facing south this way (illustrating). The girl's body and the girl was standing this way (illustrating), waiting to step in the car. The defendant was standing to the girl's right side with his hands facing south of the platform and I was standing north of him. I was watching his hand and when his hand came out of her pocket he started to walk down, and as he walked four or five feet I grabbed him by the hand.

Q Was there a crowd there? A Yes, sir.

Q On each side of the girl? A Standing, not the immediate place; there was a crowd of people waiting.

Q Did you see the defendant stoop down about the time you said he had the pocketbook? A No, sir.

Q He did not stoop at all? A No, sir.

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Q Was his body close to the body of the girl? A His body was directly up against the girl's.

Q This defendant was up against her right side? A Half of his body was up against her shoulder. The crowd was facing towards the girl and he was facing south, the girl standing (indicating) right here in front, and he had half of his body up against her shoulder.

Q Did the defendant have any newspaper in his hand?

A No, sir.

Q Sure of that? A Yes, sir.

Q Did the girl have a newspaper? A Well, she may have had something in her hand?

Q Did any of the persons who were in the immediate vicinity of the girl have newspapers in their hands? A I guess they always have newspapers; I didn't observe that; I was watching this defendant and the girl.

Q Were you working alone? A I was alone on this particular case. My other partners were working on some other part of the station. We always work at six o'clock, until the rush hour is over.

Q You knew the defendant, didn't you? A No, sir.

Q Now when a person is arrested and convicted of grand larceny his photograph is taken, isn't it? A There is a thousand photographs, yes, sir, they are.

Q Those photographs are then classified? A Yes, sir.

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Q. In different classes of cases? A. Yes, sir.

Q. And a particular class of cases are given to the special detectives on those cases? A. No, sir.

Q. Well, you observe those and watch the photograph?

A. No, sir. There are hundreds of pictures I have never seen of pickpockets around here and which I am sure I have never come across yet.

Q. There are very few --

THE COURT: He said hundreds. The jury will believe the witness unless Mr. Rosenberg takes the stand and proves there are but a very few of them.

MR. ROSENBERG: I am asking --

THE COURT: You will simply try this case on nothing but the facts here. This detective says that he got this defendant with his hand in this woman's pocket, and you are trying to prove that he knows every pickpocket in New York.

MR. ROSENBERG: I think he does.

THE COURT: So you are a skillful detective but you don't know it all.

MR. ROSENBERG: He admits --

THE COURT: He admits there are some pickpockets that he knows but he don't know them all. There is some hope for a man who says there are some things he does not know.

Q. Now, Mr. Finn, in addition to the photograph that is

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taken of a person who has committed a crime in the City of New York, is it not a fact that all persons arrested and charged with larceny are placed in what is known as the "Line-up" at Police Headquarters? A The pictures? After a person is charged with grand larceny he is detained, unless he is bailed out. If it is on a charge of petit larceny or a misdemeanor we don't see them; they are taken directly to the Night Court.

BY THE COURT:

Q Did you ever see this man in the line-up? A I never seen the man before.

THE COURT: That is all.

MR. ROSENBERG: I am asking the defendant whether or not that is not a custom at Police Headquarters.

THE COURT: He is not responsible for that. You are arguing to the jury that he is lying when he says he did not know him. He said he never saw him in the line-up.

BY MR. ROSENBERG:

Q You attend the line-up every morning? A No, sir, I do not.

Q When you don't attend a line-up and a person is convicted don't you have the photograph of the person before you?

THE COURT: I will not allow any further examination on that line.

MR. ROSENBERG: Very well.

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THE COURT: He has admitted there is a line-up every morning of persons arrested for felonies and not bailed out and he has been ten years, or six years, doing this work, and he says photographs are taken of people arrested and convicted but he says he never saw this man's photograph and never saw him in the line-up.

MR. ROSENBERG: But he may be mistaken.

THE COURT: The question is whether he is honestly mistaken or not.

MR. ROSENBERG: But your Honor should not omit to state that he may have been mistaken.

THE COURT: That is for the jury to say. The witness has testified that he found that girl's pocketbook in the defendant's hand and he charged him with taking it.

MR. ROSENBERG: But the defendant said he found it.

THE COURT: Let him tell that ^{to} the jury. They may believe him, but all this examination of the detective amounts to nothing.

MR. ROSENBERG: I except.

THE COURT: Absolutely nothing. An attempt to befog the issues.

MR. ROSENBERG: I except to that statement.

THE COURT: You may except to it.

REDIRECT EXAMINATION BY MR. MINTON:

Q At the time you first saw him and placed him under arrest, you are sure he did not stoop down and take anything

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off the walk? A Yes, sir.

MR. MINTON: The people rest.

D E F E N S E .

A B E K A P L A N , the defendant, was called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Where do you live? A 359 Grand street.

Q And how old are you? A Eighteen.

Q Talk loud. A Eighteen years.

Q Now you are charged herewith stealing the pocketbook of this little girl, a circular metal pocketbook with five cents in it, from this young lady here who was on the stand, on March 9, 1915, at the subway station, Forty-second street, Manhattan, and I ask you did you take that pocketbook from that girl's pocket on that day or any other day? A No, sir.

Q Sure of it? A Sure.

Q Did you put your hand in the girl's pocket and then take the pocketbook out? A No, sir.

Q Are you sure of that? A Sure.

Q Did you have the pocketbook in your hand? A Yes.

Q Tell the jury exactly how you got the pocketbook in your hand. Talk loud so that the last man can hear you?

A I was going to Willis avenue, Bronx, to get a job in a butcher shop, 690 Willis avenue, and I was going to 23rd

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street station, I took an express to the Grand Central and there was a local I changed for; I don't speak very good English.

THE COURT: Do you want an interpreter?

THE WITNESS: I think I will.

THE COURT: How long are you in this country?

THE WITNESS: Three years.

Q You admit you spent a term in Elmira? A Yes, sir.

Q Did you learn English there? A When I came here I didn't know anything at all.

Q How long are you out of Elmira? A Ten months.

THE COURT: Now if you need an interpreter we will get one.

MR. ROSENBERG: I think we can get along without one. He spoke to me all right.

THE WITNESS: I just came out from the local train and I was going up to the express to take a Lenox express. There were many people on the side of us because it was six o'clock; everybody goes from work then. I was standing in the same line where this girl was standing.

BY THE COURT:

Q You saw the girl? A Sure. And this girl stood at the same place where the train came out. Everybody tried to push in the same place, to go in the express. This girl when she pushed, you know the girl when she pushed in the

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train something fell out and when I bowed down on the floor I seen this little thing and a little piece of paper. I picked it up in my hands and just when I went to look at it I saw this man grab me, and he said, "What did you pick up from the floor?" I show him this little paper and he said it belongs to this little girl. So he comes up and said, "Let us ask her." He comes up to the girl and he said, "Is it yours?" She said, "Yes, it is." "Did this man steal it off you?" She said, "I don't know him." Then he will take and lock me up. She said, "I would not like him to be, I have nothing against him." Then he took me to the station house. I said, "Why do you want to lock me up when this little girl has nothing against me, you know?" He said, "I know you are a pickpocket and I arrest you because you were once arrested." So he took me up. I am here nine or ten weeks and everybody tried to get me to plead guilty, and I know I am not guilty in this case.

Q While you were on the station did you touch another woman on each side of her to feel whether she had a pocketbook; did you, yes or no, did you put your hand on another woman?

A Everybody was trying to push, everybody pushed his hands to come in the train.

Q Well, I am talking now of before you went near the door of the train. The detective said you put your hand on a woman and felt her pockets, did you do that? A No, sir.

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Q Now did the detective say that he knew you when he arrested you? A Yes, sir.

CROSS EXAMINATION BY MR. MINTON:

Q You were convicted of grand larceny and sent to Elmira?

A Yes, sir.

MR. ROSENBERG: That is admitted.

Q And that was for picking pockets? A Yes, sir.

Q And was that for picking pockets in the subway? A Yes.

Q And that time you were arrested it was in the Fourteenth street subway? A Yes, sir.

Q About six o'clock? A I don't know the time.

Q It was five fifty-five? A I don't remember.

Q On the Fourteenth street subway? A Yes, sir.

Q Have you ever picked a pocket in the subway since that time? A No, sir.

Q Didn't you pick a pocket in the subway on the 11th of January, 1915, of a person named Lellie? A No, sir.

Q Did you put your hands on her for the purpose of picking her person? A No, sir.

Q You are sure of that? A Yes, sir.

Q Your occupation is what? A A waiter.

Q Were you a waiter in January, 1915? A January 1915?

Q Yes? A No, I had no job.

Q Your name is Abe Kaplan? A Yes, sir.

Q You are eighteen or nineteen years old? A Eighteen and a half or nineteen years old.

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Q Born in Russia? A Yes, sir.

Q You live at 338 East 23rd street? A I was living there then.

Q While living there didn't you attempt to pick a pocket in the subway? A No, sir.

Q Where were you living when you were arrested this time? A On Grand street.

Q You gave your address as "To home"? A Well, it was 339 Grand street.

Q You did not give the police that? A It is a lodging house there.

Q Did you think the officer knew where you lived? A I told him I lived in a lodging house.

Q Did Officer Finn know where you lived? A No, sir.

Q What is the name of the butcher you were going to see? A Rothman.

Q Where is his store? A 690 Willis avenue.

Q How long have you known him? A I worked two weeks for him. He told me he didn't need no more boy but I was going back, maybe he take me, I was going up to see him.

Q You were going up to see him to get a job at 6:30 at night? A Yes, sir.

Q Is that right? A Yes, sir.

Q For no other purpose whatever? A No, sir.

Q Did you ever work in a butcher shop? A I was working for two weeks for this man.

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Q Where were you working at the time you went up? A I was not working.

Q How long had you been out of work? A One month.

Q You had all the day to yourself that day? A Yes, sir.

Q Why didn't you go up in the day time? A Because he is closed.

Q In the day time? A Yes, sir.

Q And he is open at night? A He has a son. He is an old man and I have to speak with him through his son.

Q You couldn't see the owner in the day time? A He has a son.

Q What is the son's name? A Charlie.

Q Charlie what? A Charlie Rothman.

Q Where does he work? A He works in the store and his old father owns the butcher shop.

Q What store does Charlie work in? A I don't know where he is working.

Q How well do you know Charlie? A For two weeks, since I was working there.

Q You saw this note (referring to People's Exhibit No. 2) drop too? A No, I feel it; this fell out and when I looked on the floor I saw the little note and I picked up these together.

Q Did you see this (referring to People's Exhibit 1 for identification) drop on the floor? A Yes, sir.

Q It made a noise? A It fell on my foot.

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Q It fell right at your foot? A Yes, sir.

Q And you picked it right up -- let us see you pick it up (dropping People's Exhibit No. 1 for identification on the floor)? A (The witness illustrated how he picked the exhibit up)

Q You picked it up just like that? A Yes, sir.

Q Did you say, "Little girl, here is your pocketbook"?

A She was going to the train.

Q Did you follow her? A No, I didn't have no chance.

Q At the time you picked it up, did you see this paper?

A Yes, sir.

Q That was on the ground? A Yes, sir.

Q Why didn't you pick them both up? A I did.

Q This was in your hand when you were arrested? A It was.

BY THE COURT:

Q What did you do as soon as you came out on parole?

A I was paroled on the 15th --

Q How did you get your living? A He gave me a ticket to eat, Mr. Rogers.

Q But what were you working at? A I was working in Twenty-eighth street.

Q At what? A To make buttons.

Q How do you make buttons? A I was an errand boy.

Q You were an errand boy? A Yes, sir.

Q Did you ever use your hands for any honest work? A

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Yes, sir.

Q Well, tell us about it? A I was working in 145 West Twenty-eighth street.

Q At what? A In a button factory; I was not working at buttons, I was an errand boy.

Q Did you ever use your hands for any work? A Yes.

Q You told us only for errand work? A Only for errand work.

Q Just let the jury see your hands? (The witness stepped down from the witness stand and displayed his hands to the jury)

BY MR. MINTON:

Q You say you did not have time to get the girl? A No.

Q The officer had time to get the girl? (No answer).

BY THE COURT:

Q You walked away from the girl? A No, I didn't walk away because when I picked the purse up, right away he grabbed me and said, "What did you take? What did you pick up?"

Q After he grabbed you he spoke to you? A Yes, sir.

Q And then he got the little girl? A Yes, sir. He just took me and said --

Q After he spoke to you he grabbed hold of the girl?

A No, I told him who it belonged to.

Q You told him? A Yes, sir.

Q Whose pocket it dropped out of? A I didn't know whose pocket; I knew this girl because she was standing there.

Q How did you know it dropped from her pocket? A Because

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I was standing, she and me together.

Q How close were you to her? A An inch.

Q Right up against her? A Yes, sir.

Q On her right side? A Yes, sir.

Q Now the last time you were arrested you were not arrested by Officer Finn? A No.

Q You didn't see Officer Finn that time, did you?

A No, sir.

Q Just answer the question: Had you ever seen him on any occasion? A yes, sir.

Q Where had you seen him? A At Headquarters.

Q On another occasion? A Yes, sir.

Q What other occasion? A When I was arrested in January, at the time they took me up there and I was looking at them.

MR. ROSENBERG: Is there any mention of the police?

THE COURT: I told you after you had asked Officer Finn that he was not liable or any other of the police. Officer Finn said, "No." Counsel is asking your witness the same question.

MR. ROSENBERG: He said he saw him in January.

BY MR. MINTON:

Q What were you doing in Headquarters?

MR. ROSENBERG: That is objected to.

THE COURT: I will allow it.

MR. ROSENBERG: I object to it as incompetent, irrelevant and immaterial.

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THE COURT: I will allow it, in view of the questions you asked Officer Finn.

Q What were you doing in Headquarters? A He was looking at me when I was arrested. Everybody when a man is arrested --

BY THE COURT:

Q You were in the line-up? A Yes, sir.

Q In January of this year? A Yes, sir.

Q And Officer Finn was there? A Yes, sir.

Q How do you know Officer Finn was there? A Because I was looking at him.

Q Did he not have a mask on? A Sure.

Q But you can tell him through his mask? A Not through his mask. I saw them when they came out.

Q You saw him? A I saw him a couple of times in the station house.

Q Which station house? A Headquarters, in the station.

Q What station are you talking about, Grand Central?

A No, I mean Headquarters.

Q How do you mean "Headquarters"? A They call the station Headquarters.

Q The station house you mean? A No, the Headquarters; it was downstairs in the station.

Q In the cells? A That is what I mean.

Q You saw him when you were in the cell? A Yes, sir.

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Q When? A When he came out the first time in January, when I was arrested.

Q Not the first time. You were sent to Elmira. You mean since you came out of Elmira? A Yes, sir.

MR. ROSENBERG: That is all under objection concerning the several arrests.

THE COURT: I told you it was immaterial about the arrest. You asked Officer Finn if he hadn't seen him. He said no, and this defendant says he has seen him and he may be asked where.

BY MR. MINTON:

Q I ask you once more: Had you on that occasion just picked a pocket in the subway? A No, sir.

Q How could you bend down to pick up this purse when this crowd was around you? A When the train came up.

Q The train was just stopping? A The train was yet going.

Q It was going out? A It was coming and when everybody was trying to push I felt something fall out.

Q If the train had not come in why was everybody pushing? A It was coming.

Q You were shoved up against those iron rails? A Yes.

Q And you were all shoved up against them? A I was not in the middle; I was the last.

Q You were right behind? A Not behind.

Q There was nobody behind you? A Sure there was.

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Q Do you know who it was? A It was a man, I don't know.

Q And were you able to stoop down when people were pushing you from behind? A Sure.

Q And yet you were able to stoop down and pick up something like this (illustrating)? A Yes, sir.

Q In spite of these people behind you? A Yes, sir.

Q Did you see anybody look down when this thing dropped?

A Nobody was looking. There were two people looking when I went down.

Q You heard the noise of it dropping? A No, I heard it when it fell on my foot.

Q You felt something on your foot? A My knee.

Q Which was it, your knee or foot? A (The defendant illustrated)

BY THE COURT:

Q That is your knee? A I think it is.

THE COURT: Any redirect examination.

MR. ROSENBERG: No, your Honor.

THE COURT: We will now take a recess until 2:15 p.m.

Gentlemen of the Jury, be very careful during recess not to discuss the case with any stranger, and you must not talk about it among yourselves and you must not form any conclusion as to the guilt or innocence of the defendant until you hear all the evidence on both sides and until the case is given to you by the Court for your decision.

If you have any other evidence, Mr. Rosenberg, you



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may produce it after recess.

AFTER RECESS.

MR. ROSENBERG: The defendant rests.

MR. MINTON: The people rest.

Mr. Rosenberg summed up.

Mr. Minton summed up.

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Gentlemen of the Jury:

This defendant has been indicted by the Grand Jury for the crime of grand larceny in the second degree. The allegation is that in the county of New York on the 9th of March of this year, in the day time, with force and arms, one case, value twenty-five cents, and the sum of five cents, lawful money of the United States of America, of the value of five cents, and one piece of paper of the value of one cent, of the goods, chattels and personal property of one Lillian Leichtag, on the person of the said Lillian Leichtag, then and there being found, from the person of the said Lillian Leichtag, then and there feloniously did steal, take and carry away.

That is a very simple charge. You understand an indictment is a written charge, an accusation in writing, with intent to let the person accused know what the charge is against him. Therefore, the law requires it to be in plain, simple English. It says, in effect, that on the 9th of March, he took the articles of value stated in the indictment from the person of Lillian Leichtag, in the day time, and that he took them with intent to steal them from her, to deprive her of them, and keep them for himself. It is not, of course, intended to prove that he is guilty. The fact that a man is charged with a crime is no proof of his guilt. But it is intended to let the defendant know what the charge is. So that when that has

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been done the indictment has performed its office, its functions have been fully carried out.

There is something unusual in this indictment. It is charged that he committed this crime as a second offense; it is alleged that prior to the time that he committed this crime he had already been convicted of another crime; of grand larceny in the second degree. The defendant told you on the stand that he had been sent to Elmira for grand larceny. The object of that allegation is not to prove that he is guilty of picking her pocket in the Grand Central Station. It is intended only for the guidance of the Court in the disposition of the defendant, if you find him guilty. The fact that he was convicted of a crime may be considered by you on the question of his credibility, as I will explain to you later. But, as his counsel said, you are not now asked to convict him because he was convicted before. That is not the purpose; far from it. In fact, the rule is just the other way. He is presumed to be innocent in spite of the indictment. The presumption is that he did not take anything from this girl's pocket, and that is the reason why we have the girl brought here to tell you what happened. She says that she was going home, and that she had in her pocket--the pocket of her Winter coat, which she is not wearing today because the weather is warmer today than it was in March--that silver purse and one nickel in it. She had paid her fare at

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the station window and get her ticket, put her little purse back in her pocket and imagined she was safe under the protection of the law, and was proceeding to board the train to go home.

Officer Finn testified that he was on that platform on business, the business for which the people of the City of New York pay him, and Mr. Rosenberg, who knows the detectives of the City of New York, says Mr. Finn is a good detective. The officer told you that he observed this man in that station long before he saw this girl; that he saw the defendant approach the girl from behind, and place his hands lightly along the pockets of her coat, and then follow her, keeping behind her until she was about to enter the car, when he saw him put his hand in her pocket and take something out. Now being a detective and seeing him acting in that way, his duty required him to see what was going to happen, and to arrest this man if he saw he was going to commit a crime. That he did. He testified that he grabbed the defendant by the hand and found therein the little purse. The defendant was asked to explain his possession of it. He told the detective that he found it. That is as I recall the testimony. The defendant corroborates the girl and the officer to the extent of admitting that he was on the station platform and that this purse was found in his hand. He denied that he ever passed his hands along the girl's coat to locate her valuables, if

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she had any, or put his hand in her pocket. He stated that he was going to some place "to see Charlie, whose father was an old man, in order to get a job," and as he was trying to get on the car something fell. He has shown you how he stooped down in the crowd to see what it was and stated that just then the officer caught him, and charged him with taking the purse out of the girl's pocket.

That is all the evidence in the case, and that is all you have to consider on the question of his guilt or innocence. You are not to consider the question of his previous conviction except on the question of his credibility as a witness. If there be a conflict in the testimony, it is for you to say which witness you believe. In other words, while the Court is the judge of the law and is charged with seeing that the defendant has a fair trial, that is, a legal trial, a trial in which the evidence is confined to the issues in the case, and to instruct you in the law. But you are the sole judges of the facts and the credibility of witnesses.

The law is very simple. There is no dispute about the law. If you put your hand in another man's pocket and take any property, no matter if it is only worth a penny, with the felonious intent of depriving him of it and of appropriating it to your own use, that is grand larceny in the second degree. There is no dispute about that. If the act be done in the night time, after sunset, it would be grand lar-

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sony in the first degree. Here the benefit of the doubt is given to the defendant, and he is charged only with grand larceny in the second degree. It is presumed that the alleged crime was committed in the day time, although the testimony indicates that it was in the night time. You heard the testimony as to the time, that it was at the evening hour when the rush is on, when everyone is going home.

You will take the case then, weigh the evidence in the light of the law, as the Court gives it to you. You are judges now. You are judges of the credibility of the witnesses. You are judges of the facts, the sole and exclusive judges. That, however, does not mean you are czars. You are not above the law; you are bound by the law, just the same as any judge is. That is the thing you must respect. If you do not respect the law, you can not expect anybody else to do so. Be honest men, make an honest effort to find the truth from the evidence and then pronounce your honest opinion of it.

Sometimes you can determine the credibility of a witness by considering the character of the person who gives testimony. You saw that girl on the stand. Did she impress you as would a bright High School girl -- as she said she was -- that she told the exact truth and nothing else? She testified that she did not feel the defendant's hand in her pocket.

You heard counsel for the defendant excuse two or three men from the jury because they acknowledged that they at one time or another had their pockets picked. Pickpockets do not

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interview you when they pick, or attempt to pick, your pockets.

It is for you, therefore, to say whether her testimony has been impaired in any way by anything that has happened in this case, or by any fact that has been brought to your attention.

Then if the officer's testimony is consistent with reason, if it appeals to your own judgment, the question for you to decide is by what was he attracted to the defendant? The defendant's lawyer argues that the officer could not possibly see the defendant put his hand in the pocket of the girl. Well, if the officer did not see him put his hand in her pocket, he is guilty of perjury. He swore he did; he swore that he caught the defendant's hand; he swore he was watching him because he had seen him act in a way as if he was going to pick the girl's pocket, and in the discharge of his duty as an officer he kept close to him, and, as he told you, he grabbed him. The defendant testified, I think, that the detective grabbed him as soon as he picked the purse from the ground, almost before he saw what he had done.

However, you must remember that the officer has not been shown to be guilty of any criminal or vicious act in his career. That is one of the tests of credibility. He was cross-examined by counsel for the defendant. If it is a crime to be an experienced detective, he would have to plead guilty. If you think that inexperience and lack of skill are good qualities in a detective, you may disregard

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EXHIBIT 77

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his testimony. But you have to ask yourselves, are experience and skill in a detective sufficient grounds for discarding his testimony? If, however, it has been shown that the officer made any different statement elsewhere concerning this case, than the statement he made here, that fact may be considered by you. Also if it has been shown that the detective has committed a crime, or a vicious and immoral act in his life, you may consider that when determining his credibility. The same rule applies to all the witnesses on both sides. If the defendant has committed any other crime, you must consider that, and give such weight to it as you may think it is entitled. You should not reject his testimony absolutely on that account. It is, however, one of the elements you should consider. In other words, you are the sole judges of the credibility of the witnesses. You must consider the manner of a witness, the intelligence of a witness, the opportunity a witness had to enable him to know what he testified to; the interest of a witness in the controversy, and the motive of a witness, which might possibly affect his or her testimony. Has the detective such a motive against a man whom he swore he never saw before, as would lead him to commit perjury in your opinion, or has the defendant an interest or a motive to testify falsely? Is he an honest man, a victim of a mistake here, honestly telling you his story, or is he a thief caught in the act and lying to save himself

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from going to prison? These are the things you should consider in this case.

The rule, as I said before, is that the defendant is presumed to be innocent, and unless all the testimony satisfies you beyond a reasonable doubt that he did pick the girl's pocket, that he is guilty of larceny, you must acquit him.

Now a reasonable doubt, as most of you have heard me say before, is a doubt founded on reason. Now a doubt founded on a prejudice against the law, or sympathy for one charged with a crime, on account of youth or any other consideration; it is not a doubt based on a desire to avoid doing your duty, because your duty may not be pleasing, not founded on any improper motive. But it is the state of an honest man's mind when he finds himself unable to state, after he has carefully weighed all the testimony in the case, that he is fully satisfied to a moral certainty that a defendant is guilty. Remember the law does not require mathematical certainty. Nothing is certain in this world outside of mathematics. In your business every day you have to decide as to the probable outcome of acts on your part, and you decide according to what you deem is more advantageous for your interest and business. The result may not always conform with your expectations or judgment, but you do the best you can to do the right thing. In mathematics we have exact knowledge. Two and two are four, as we all know. No one disputes that. But you do not have to produce a flashlight or a pocket before you can convict a man

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EXHIBIT 77

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of picking pockets. If from all the circumstances and the testimony you are morally convinced that this purse did not fall out of the girl's pocket, but that it was taken out by the defendant, that he did put his hand into her pocket, with intent to deprive her of her property, then he is guilty of grand larceny in the second degree. That is all the law requires, and the law asks you to be honest men. The other day many of the jurors asked to be excused from jury duty. Of course you would all rather be doing your own work than serving as jurors. But the State of New York has made a demand on you to do certain work. It has commanded you to lay aside your purely personal matters for the time being and devote yourselves to the consideration of matters of interest to the whole community.

This charge here is not made by Officer Finn. This charge is not made by that little girl. It is made by the millions of people who have gathered together in this State to work out their own salvation, to seek happiness according to their lights and notions, free from unlawful molestation or interference of anyone else. The State guarantees to every man who comes here, no matter where he was born, or what his notions may be, that so long as he conforms to our law, respects life, liberty and property, and the happiness of others, he will not be interfered with.

They say this man did not obey the law, the law forbidding larceny, the reiteration by our law of the Commandment, "Thou

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"thalt not steal"; the taking of personal property from the owner, or the possession by any one other than the owner, with the intention of depriving the owner of it permanently and to appropriate to the use of the taker. That is what it forbids. Is it too much to ask people to refrain from larceny? You are supposed to acquiesce in that law. You have sworn or affirmed you would apply that law. Be honest men. Weigh all the testimony calmly, quietly and dispassionately as honest men seeking to do your duty. Banish all thoughts of sympathy or prejudice from your mind. They do not belong to the jury box. You are not making the laws. You are not there to grant people a license to steal, or to grant immunity for criminal acts. Nor are you there to say a man is a criminal unless the evidence makes you say it. If you are firmly convinced that this defendant is guilty of grand larceny say so by your verdict. Under our law, one who has previously been convicted of grand larceny may be convicted as a second offender, if he again break the law. Now this defendant has been indicted of grand larceny in the second degree as a second offense, and if you find that on the 9th day of March, as stated in the indictment, he picked the pocket of that girl in the Grand Central Station, as charged in the indictment, then you may find him guilty of grand larceny in the second degree as a second offense. You should therefore find him either guilty or not guilty.

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MR. ROSENBERG: I except to that portion of your Honor's charge wherein you refer to the excusing of some jurors because they stated they had had their pockets picked. They were really excused for other reasons.

THE COURT: I will withdraw that remark. Mr. Rosenberg in his summing up made a long speech about the methods of pickpockets and crooks. Now there is no evidence of that in the case, as I told him at the time. There is no rule of law which says that the people must produce a flashlight of a pickpocket in the act. If there were, a pickpocket would never be caught. It is, indeed, a good thing for the community that there is no such rule of law. You will ignore what I said about those jurors who said their pockets had been picked, and confine yourselves solely to the evidence in the case. You will remember the girl said she did not feel anything being taken from her pocket.

MR. ROSENBERG: I except to that portion of your Honor's charge wherein you state in words or in substance that the people are not required to procure a flashlight of a person picking pockets.

THE COURT: I so charge again. The people are not required to produce a flashlight photograph of a man in the act of picking a pocket before he can be convicted of picking pockets. If the evidence of witnesses, the oral testimony of witnesses, is sufficient to picture that scene to you,

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as to what happened there, that is, enough evidence to make you feel convinced to a moral certainty, or as the law puts it, "beyond a reasonable doubt", that he did pick the girl's pocket, then that is all the law requires. If you want more evidence than that you are violating your oaths, you are putting a greater burden on the people than the law puts upon them, and you are granting a greater license or indulgence than the law already gives to a defendant.

MR. ROSENBERG: May I have an exception to the last part of your Honor's statement?

THE COURT: You may. That is the law. It is my duty to make the law very plain. When that is done, my work is done, and the jurors then become the judges of the facts. If there is any juror who does not understand the law, let him so state, and I will endeavor to make it clearer, if possible. Your judgment of the facts is supreme and exclusive, as is your judgment of the credibility of the witnesses. You must ignore what anybody else has said. I have not expressed any opinion of the credibility of the witnesses. Counsel for the defendant in summing up tried to prove that the detective was unworthy of belief. If you agree with him in that respect, dismiss the action. If you do not agree with him then weigh his testimony together with all the other testimony in the case.

MR. ROSENBERG: I except to that portion of your

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Honor's charge wherein you use words of commendation by singling out the testimony of the detective, Finn, and also particularly I except to that part of your charge relating to said detective, wherein you state, in words, or in substance, that "if you do not want experienced detectives, don't believe him" -- referring to Detective Finn.

THE COURT: Did I not quote your words of commendation to the jury?

MR. ROSENBERG: No.

THE COURT: You told them what an experienced man and specialist Detective Finn was, making a comparison between persons who specialize in detective work and legal work.

MR. ROSENBERG: But your Honor did not put it in the same way that I did.

THE COURT: It is for the jury to say. The jury will not be influenced by what I said. I will express my opinion that the more experienced and clever a detective is, the better qualified he is for his work. Now, you must not be influenced by what I say. It is your burden to decide whether you believe a witness or not. Mr. Rosenberg argued to you that because the officer was an experienced and able detective he was less liable to be believed. I merely called your attention to the fact that the more men of experience and ability we have, the better. But as to whether this detective told the truth today is for you alone to say. I have not said

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whether he told the truth or not.

MR. ROSENBERG: Your Honor in charging the jury stated that if they did not believe the detective committed deliberate perjury they must convict the defendant. You excluded from their consideration the fact that the detective might have been mistaken.

THE COURT: He swore positively, as I understood it, that he saw the man put his hand in her pocket. Perjury is a serious crime. The law defining perjury says that if a witness deliberately and wilfully makes false statements, under oath, on material matters, that is perjury. If a man believes what he says to be true, even if the statement is false, it is not perjury, because it lacks malice and deliberation. That applies to the defendant just as well as to Mr. Finn. If the defendant put his hand into that girl's pocket and says he did not, he is guilty of perjury. The rule is that if you find that any witness committed perjury, you may disregard all the testimony of that witness, although you are not obliged to. But before you conclude that any witness has committed perjury, you ought carefully consider all the facts and circumstances in the case.

MR. ROSENBERG: In view of Mr. Minton's argument to the jury, I ask your Honor to charge the jury that they are not concerned with the backing up or commending of the Police Depart-

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ment of the City of New York for its work in general, or the work of any particular man.

THE COURT: I so charge. You are here simply to decide questions of fact. If I charged on some points which, perhaps, were unusual, it was solely on account of statements made by Mr. Rosenberg. Counsel told you he was an assigned lawyer; that the defendant was a poor boy; had no money. Those things have no concern in the case and counsel knows it as well as anybody else. There is not one law for the rich boy and another for the poor boy. The law is the same for all. When counsel is assigned to a case he must do his duty just the same as if he had received a retainer. Mr. Rosenberg was assigned by the Court -- I did not assign him. I have, however, assigned him in cases, because I know he always gives his client the benefit of sound legal advice and experience. He is an expert. That, however, is not any reason why he should have the law changed in behalf of his client, and any appeal to sympathy must be ignored by you. That is all. You are to ignore, as I told you previously, appeals to prejudice or sympathy. You are to take the law from the Court. I know you will. I know you would not favor a statute repealing the law against larceny. Now, when it comes to decide whether the evidence here shows that the defendant is guilty or not, you must decide from the evidence and not go outside of the case. I excluded some

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evidence because I thought it did not belong to the case. That is my duty. Confine your attention to the case. Do not consider anything that has been excluded from the case, because that would be highly improper. It would be a violation of your obligations if you were to decide the case on something that was not admitted, or by reason of any argument of counsel. That is, it would be improper, unless that argument was based on the evidence, or the law in the case as the Court gives it to you. In other words, you must confine yourselves to the law and the evidence. The law as the Court gives it to you and the evidence as the witnesses give it to you. All comment of counsel, or anyone else, you must ignore, unless they are deductions that agree with your own opinions. You do not have to agree with what counsel or anybody else has said. Be guided by your own judgment of the evidence.

Any further charge?

MR. ROSENBERG: No, your Honor.

THE COURT: Mr. Minton?

MR. MINTON: No, your Honor.

THE COURT: Of course the jurors understand I have no interest in the verdict one way or the other.

The jury retired at 3:30 p.m.

The jury returned at 3:55 p.m., and in response to the

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Clerk of the Court the foreman announced that the jury had found the defendant guilty as charged in the indictment.

MR. ROSENBERG: Your Honor, may I reserve my motions?

THE COURT: Yes.

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Peter P. McLoughlin,
Official Stenographer.