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

3620

-----X
THE PEOPLE

: Before:

v.

: Hon. Morris Koenig, J.,
and a jury.

HENRY GINSBERG.

:
-----X

Tried, New York, December 19th etc., 1921.

Indicted for Robbery in the First Degree.

Indictment filed April 30th, 1921.

APPEARANCES:

Assistant District Attorney James E. Donohue, for the People.

Abraham Horowitz, Esq., for the Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank S. Beard,

Official Stenographer.

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THE PEOPLE'S TESTIMONY.

JOSEPH GOLDSTEIN, a witness called on behalf of the People, being duly sworn, testified as follows:

BY THE COURT:

Q Where do you live? A 740 East Fifth Street.

Q On the 25th of April, 1920, were you playing in this crap game in Louis Scharf's apartment, 805 East Fifth Street? A Yes, sir.

Q And you were held up by three men, who entered the apartment, with pistols in their hands, and money was taken from you?

A Yes, sir.

Q Is this the man or one of the three men? A No, sir.

THE COURT: I think that presents all the alleged facts of the People's case.

MR. DONOHUE: Yes, sir.

THE COURT: Do the People now rest?

MR. DONOHUE: Yes, sir.

MR. HOROWITZ: No cross examination. I move to dismiss, if your Honor please.

A Man in the Audience (Benjamin L. Bochner): I want to testify in this case. I was one of the victims. I'll tell you why I wasn't subpoenaed in this case.

THE COURT: Take the stand, sir, and be sworn, if you desire to make any statement. It must be under oath.

BENJAMIN L. BOCHNER, of 336 East 4th Street, being duly sworn, testified as follows:

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BY MR. DONOHUE:

Q What is your address, sir? A 336 East Fourth Street.

Q Were you present on April 25th, 1920, at 738 East Fifth Street, the apartment of Mr. Scharf? A Yes, sir.

Q And who was along with you at that time, Mr. Bochner? A Why, twenty or thirty fellows.

Q Were you there when something happened? A I was, sir.

Q Now, about what time did this thing happen? A Well, it happened late in the evening, when the tours of the police officers change, close to 12 o'clock.

Q And did you give your name to the police officers? A Yes.

Q And what name did you give? A Lawrence Bochner. Part of my name is Lawrence Bochner.

MR. DONOHUE: Call in Officer Murray.

Q Did you ever meet Officer Murray in this case? A Yes; and I have known him for years. I have spoken to him on different occasions, and have been friendly with him, in fact.

Q Now, Mr. Bochner, you say that something happened in this apartment on this night? A Yes, sir.

Q What happened? A Well, we were engaged in a crap game, and there was a rap on the door, and one of the fellows opened the door, and these three fellows crashed in, a fellow named Kerr, a tall fellow, and another fellow from the neighborhood, that they call "Cokey Johnny Lee", and this fellow Ginsberg (indicating the defendant).

Now, I have known him for years around the neighborhood,

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and he came in unmasked. They all came in unmasked, with nothing on their faces, and we thought it was a joke, because we knew them from the neighborhood, and saw them come in unmasked. And the tall fellow was six feet, two, at least, and a stocky-built fellow. At first, we thought the cops was coming in, because he was such a big fellow.

And he pulled out two guns, and backed us face to the wall, and this "Cokey Johnny Lee", he stood up, with his coat collar turned up, on the washtubs, and shook like a leaf there-- he must have been charged with cocaine-- and this fellow Kerr was standing up against the door with a gun in each hand, pointing at us.

And this fellow (indicating the defendant) searched about fifteen fellows. He had two guns, but he put one gun in his pocket while he was searching the fellows, and searching me.

Q Who searched you? A This man here, Ginsberg (indicating the defendant). He searched me, and took everything I had.

Q What did he take from you? A He took my diamond pin, ring and watch and chain, and other things. I missed about six thousand dollars in a lump sum. And all these other fellows can testify to that.

BY THE COURT:

Q It was not just a friendly crap game, was it? A No, sir; not exactly.

Q It was a crap game for money, was it not? A Yes, sir; and I always carry a lot of money on my person, one, two or

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three or four thousand dollars, or more. It amounted in this case, with the jewelry and the diamond ring and pin, a Masonic diamond ring, and other stuff, to about six thousand dollars

And this fellow searched me, and ripped out my pockets-- he was so rough about it-- and stuck a gun against my stomach, with the trigger cocked, and I know something about a gun, because I have handled them. And it was fully loaded and fully cocked.

And he took everything I had, and I had a marriage ring, my mother's marriage ring that she had had for thirty years, and this fellow wasn't going to give it back, when I told him what it was, and then Kerr had some little consideration, and told him I should have it back, and I thanked him for it.

BY MR. DONOHUE:

Q Did you get a subpoena in this case? A No, sir; but in the cases of Kerr and Lee, I got subpoenas.

Q Did you ever speak to me about this case? A No, sir.

Q How did you come to be here today? A When this case was first on, I met a man named Lustig, and he said he couldn't find the fellows around the block and asked me--

MR. HOROWITZ: I object to that, and move to strike that out.

THE COURT: Yes. Motion granted. Strike it out.

BY MR. DONOHUE:

Q Well, you were not subpoenaed in this case? A No, sir.

Q Did you give your name to Officer Murray? A Yes.

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BY THE COURT:

Q Were you examined before the Grand Jury? A No, sir.

BY MR. DONOHUE:

Q However, now you say, Mr. Bochner, that you are positive that the defendant is one of the men that came in, and held you up, with a revolver in his hand, and searched you and took your money and the jewelry? A Yes, sir.

Q Did you see him searching anybody else there? A Yes, sir.

Q Did you see Joseph Goldstein there (indicating Joseph Goldstein)? A Yes, sir.

Q And did you see anybody searching him? A Well, I'll tell you candidly, I can't say if I seen him searching him or not. We were about thirty fellows, and we were all worked up, because these fellows that we had all seen in the neighborhood were holding us up.

Q Was Joseph Goldstein there? A Yes.

Q Is there any question about that? A There is no question about that at all.

Q And he was there when the defendant and two others came in, and held you up? A Yes.

Q And everybody in the room was held up? A No, sir; they didn't search everybody. There was a knock on the door, and they were disturbed. They didn't reach everybody.

BY THE COURT:

Q When there was a knock, what happened? A The knock was heard, and "Sparky" Weiss came in, or, at least, came to the

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door, and this big fellow said, "Come on in. The water is fine." And he said, "I will, like hell," and he turned and started to run away, and these fellows started firing, and started running out.

Q You say you are a deputy sheriff? A No, sir, I am not.

Q I understood you to say so? A No, sir.

Q What is your business? A I am in the real estate business.

Q Where is your place of business? A 1279 Stebbins Avenue, Bronx.

Q And how many times have you been in court on this case? A I have been here, I think this is the third time, in this fellow's case (indicating the defendant).

Q You knew that your name was not on the papers, did you not? A Well, I can't say that.

Q You never got a subpoena? A Not for this case, but for the case of Kerr and Pedrofsky.

Q And you never talked to me about this case, at any time; did you? A No, sir.

BY THE COURT:

Q Were you in the room when the defendant was tried on the other indictment, before this jury? A This defendant?

Q Yes. A No, sir; I just come along.

CROSS-EXAMINATION BY MR. HOROWITZ:

Q Did you tell Officer Murray about this man being one of the men? A Certainly.

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Q When did you tell him that? A Why, this was about a week after the stick-up. I met him and he said, "Here is a couple of books I have in my pocket, fellows were looking for."

Q Have you seen Officer Murray lately? A Well, I might have met him in the station house on some matters, that I went in to attend to.

Q Since the defendant has been arrested, have you spoken to Officer Murray? A Yes.

Q And have you told him that he was one of the men, since he was arrested? A No, sir; I haven't spoken to him about the case since he was arrested.

Q You know he was only arrested in October? A Officer Murray passed through Seventh Street one day, between B. and A, one afternoon, and I said, "Hello, Murray", and he said, "Hello."

Q Now, one word answers me. Did you speak to him after the defendant was arrested? A Yes.

Q You told him he was one of the men? A Yes, sir.

Q And you say that you knew the defendant? A Yes, sir; yes, certainly, for years.

Q And this is the first time you stepped into this case, just as the case was about to be dismissed? A Yes.

Q Did you go to his brother and demand money? A No, sir.

Q What do you mean by the "real estate business"? A Buying and selling my own property.

Q You say you have handled guns. In what way? A Why, I carry a gun on my person.

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Q Not as a deputy sheriff? A No, sir; under a permit from the Police Department.

Q Didn't you go around, telling friends of the defendant, if you didn't get your money back, you will make trouble? A No, sir; they just called me out in the hall, here, and wanted to square the thing, and I said, "No, nothing doing."

Q Now, I don't want that. Didn't you go around demanding money, and the return of your jewelry? A No, sir.

Q How did you happen to know that this case was going on, this morning? A I met Louis Scharf, and his brother-in-law, in a candy store, about half-past twelve this morning, and I said, "When is this case of 'Little Doggie' going on?" and they said, "Today." It was then after twelve o'clock, about half-past twelve this morning.

Q And did you ever speak to the District Attorney before about this case? at any time? A No, sir.

MR. LAZARUS: That is all.

MR. DONOHUE: May we take a recess now, your Honor?

THE COURT: Yes.

Gentlemen of the jury, do not discuss this case among yourselves or form or express any opinion respecting the guilt or innocence of the defendant, until the case is finally submitted for your consideration. Recess until 2:30 o'clock.

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A F T E R R E C E S S

BENJAMIN L. BOCHNER, being recalled by the District Attorney, testified as follows:

REDIRECT EXAMINATION CONTINUED BY MR. DONOHUE:

Q Mr. Bochner, you testified this morning, that you were present at 738 East Fifth Street, on the night of April 25th, 1920? A Yes, sir.

Q And you there engaged in gambling, shooting crap? A Yes, sir.

Q And that crap game was held in the apartment of Mr. Louis Scharf? A Yes, sir.

Q And had you been in the habit of going there, Mr. Bochner? A No. That was the first night I was there.

Q The first night? A Yes, sir.

Q And did you know the people who were engaged in that game? Were they friends of yours? A Well, fellows from the neighborhood.

Q And was Joseph Goldstein there? A Yes, sir.

Q And was he present, when these three men entered, with revolvers in their hands, and held up the occupants of the room? A Yes, sir.

Q And did you see him held up at that time? A Well, I told you this morning, it is a hard question for me to answer. I cannot answer that question.

Q Well, was he in the room immediately before they came in? A Yes; but I can't say that he was searched, because there

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were thirty fellows, and they didn't get time to reach all, and I can't say which fellows were actually searched or not.

Q But you know that you were searched? A Yes, sir.

Q And he was in the room immediately before these three men came in? A Yes, sir.

Q And you say that you recognize one of them as this defendant here, (Ginsberg) (indicating the defendant)? A Yes, sir.

Q Now, had you known Ginsberg before that time? A Yes, sir.

Q How long had you known him? A He lived down in Fifth Street years ago.

Q Well, about how long had you known him? A I don't know; I might say ten years or a little more than that.

Q And did you see him frequently during that period, did you see him very often? A Not very often; I seen him at different intervals.

Q And you knew him by sight; did you? A Yes, sir.

Q And you say that this defendant here is one of the men that held you up? A Yes, sir.

Q And there is no doubt about that, in your mind? A No, sir.

Q And how much was taken from you? A Well, with jewelry and cash, about six thousand dollars in a lump sum.

Q And can you say whether he was the man that took the money and jewelry from you? A Well, he is the man that searched me.

Q How many revolvers did he have? A A Well, they all came in with two revolvers in their hands, and, when this defendant searched me, he put one revolver in his pocket, and held the

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other in his hand.

Q And how long were they in that room, Mr. Bochner? A Well, I should say fifteen minutes at the most.

Q And was the defendant standing still or walking around? A Well, the other two were standing, and he had to make, naturally, some movements to frisk everybody.

Q Have you talked to Ginsberg since then? A No, sir; I haven't seen him.

MR. DONOHUE: That is all.

RE-CROSS-EXAMINATION BY MR. HOROWITZ:

Q Did you ever speak to him before that? A No, sir.

Q You say you have known him by sight? A Yes, sir.

Q Now, are there any marks on his face that you know him by? A No, sir, but I know his face.

Q Do you know whether he had any marks on his face? A I don't recognize people by marks, but by their face.

Q Did you know him to have a cut or mark on his face, at any time? A No. I didn't look that close at him, to see any such marks of distinction on him.

Q And you have known him for a long time, you say? A Yes, sir.

Q And you can't say whether he had a cut or mark on his face? A No, sir, because I didn't notice.

Q Now, when did you first hear that this case was on? A Why, the case was on-- the district attorney's man was around with subpoenas, the night before, the first time it was on.

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Q Well, when was that? A About two weeks ago.

Q You knew that the District Attorney was around that neighborhood? A Not the District Attorney.

Q I mean the District Attorney's man, the subpoena server.
A Yes, he was around with subpoenas, and he couldn't find them, and he said, "Will you please do me the favor, and see if you can locate them?" and I said, "I will try, but I can't promise you."

Q Do you know that man's name? A Yes. I mentioned it this morning.

Q What is it? A Mr. Lustig.

Q Did he serve you with a subpoena? A No, sir.

Q Did you go down to the District Attorney's office and say that you were a witness in the case? A No, sir.

Q And you knew the case was on trial? A Yes, was coming on trial.

Q And you knew you could identify him? A Yes.

Q And you didn't get a subpoena? A No, sir.

Q And yet, you, a man who lost six thousand dollars, didn't take the trouble to come down to the District Attorney's office, and say that you could identify him? A No, sir. My time is more valuable than that.

Q You didn't know that the case was going to trial, this morning; did you? A Well, I knew it was on; I heard that last night.

Q But you knew it was on three or four times before that? A

Yes, sir.

Q Did you come down here on any other occasion than this? A Yes.

Q You were down here without a subpoena, when the case was on? A Yes.

Q Did you go to Mr. Donohue's office? A No, sir.

Q Did you go to the District Attorney's office, and say that you were a witness in the case? A Yes, sir.

BY THE COURT:

Q How did you expect to be a witness, if you did not give your name to the District Attorney? A Well, my name was given when this thing originally happened, and I knew the case was on the first time, when I met a fellow by the name of Abe Stein-- he is in court now-- and he said, "Who is this fellow Ginsberg?"

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

THE COURT: Objection sustained.

BY THE COURT:

Q Well, you knew that the District Attorney had subpoenaed witnesses, and had not subpoenaed you? A Yes, sir.

Q Well, if the District Attorney had not subpoenaed you, are you aware of the fact that he regarded you as a witness in this case or not? A I don't know about that. My name appears on the list, though.

Q Well, did it occur to you that you should give your name, and call his attention to the fact that you were here? A Well, my name is on the original papers.

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Q Your name is not here as appearing before the Grand Jury?

A No, sir; because I didn't appear, before the Grand Jury, in any case, in any of the cases, because they said there were too many witnesses there already.

BY MR. HOROWITZ:

Q Did you tell Mr. Donohue, before you jumped up in this dramatic fashion, of yours, that you were a witness in this case?

A No, sir.

Q How long were you sitting in the court room before you jumped up? A I sat down in court for a second, and somebody called me out, and I went out, and after that I come in and I heard the motion being made , and heard something about dismissing.

Q And you heard the motion in the first case that was tried?

A What case was that?

Q The other indictment.

BY THE COURT:

Q The first case tried against the defendant, involving the same act, in which another man says he was robbed. A No, I was not here.

BY MR. HOROWITZ:

Q Well, you heard the motion to dismiss? A No, I just heard the word "dismiss". I heard you all standing there, talking, and I just come up to the bar.

Q Before that, as a matter of fact, didn't you go to the brother of the defendant, and ask him for five hundred dollars,

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for the value of the pin? A No, sir.

Q And didn't he say, "Why should I give you money, when my brother is innocent?" A No, sir.

Q And, when you came in, the last time, you saw him sitting here? A Yes.

Q And you knew he was on trial? A Yes.

Q And you wanted to testify; didn't you? A Yes.

Q What did you go outside for? A They called me out, and I walked right out, and then came in.

Q Is that the only reason why you went outside? A I don't know what the reason was. They called me outside.

Q And you say now-- and you came right in again? A Yes.

Q Now, you say that when these ~~three~~ men came in, they each had two guns? A Yes, sir.

Q Did they have their caps over their eyes? A No, they didn't have no caps. This big fellow wore a hat, and the other fellow wore a hat, and this man was without a hat.

Q Very open and brazen before men that you knew, as you say? A Yes.

Q And it looked like a moving picture? A Yes.

Q Now, how much cash did you have in your pocket? A I can't say exactly; I had about three or four thousand dollars.

Q And how much did you lose in the crap game? A I wasn't losing.

Q It was a big crap game, wasn't it? A It certainly was.

Q And big money was bet? A Yes.

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Q And you have been in the habit of going to crap games? A No, sir; I have not.

Q Haven't you played in the 14th Street, big game? A No, sir; I played in small crap games, among friends, but not in such a big game as this.

Q Did each man have a blackjack in front of him? A No, sir.

Q It was a friendly game? A Yes, sir; with fellows I knew, certainly.

Q Now, what is this defendant's name? Do you know it? A I know they call him "Little Doggie", and I know his last name is Ginsberg. I know what his name now is.

Q What is it? A I think it is Henry.

Q Don't you know it is Jacob? A Well, I heard his name was Henry.

Q And do you say that his name is Henry, because he is indicted under that name? A I saw his name on the board, Henry Ginsberg, but I don't know his first name, even now, because I don't know whether it is so or not.

BY MR. HOROWITZ:

Q Now, come up close to the table here. Here is the defendant. Now you say that you have seen him and known him by sight, for ten years? A Yes.

Q And you don't know whether he had a cut on his face? Look at his face? A No. I never took notice of a cut. When a man has a hat or cap on, I couldn't see it; and, in the crap game, I was on his extreme right, and that mark is on his left.

BY THE COURT:

Q This thing happened in April, 1920? A Yes, sir.

Q How many men were concerned in it, in this alleged hold-up? A Three men.

Q How many men, to your knowledge, were arrested? A Including this defendant?

Q Yes. Three-- with the chauffeur, it was four.

Q You mean that that they came in a machine? A Yes, sir; and the machine was waiting.

Q What did these three men do when they had held up the place?
A They jumped into the machine. It was right in front of the fire house.

Q And they started away with the car? A No, sir; these men fired from the car, and the officer was at the corner, and he fired, and, when they saw the fire of the officer, they jumped out of the machine and ran, and everybody lost track of this man and Lee, but they followed the man Kerr.

Q Now, when this man came into the room, as you say, you knew him by sight? A Yes, but I don't know his name.

Q You have said so. When was it the last time, prior to that time, that you saw him? A I have seen him at different intervals, maybe a couple of months previous, or so.

Q And you never paid much attention to him? A No; never had a word with him.

Q Now, did you know his name, as he entered this apartment?
A Certainly.

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Q Did you tell the police his name? A Oh, I can't recall that. I don't know whether I told, that night, the fellows' names.

Q Well, what did you give to the police respecting your knowledge of the men, for the purposes of identification? A Well, somebody gave a description to the officer.

Q No, what did you do? A No, I didn't give no description at all. The descriptions were given.

Q Were you present, when they were given? A Yes, sir.

Q And was the names of the men given, if any of the names were known to any of the persons who were giving the description? A Well, I don't recall any of these small technicalities. There was so much excitement that night, that I don't really recall just what was going on there. There was a big crowd at the station house, and everybody was doing some talking.

Q Well, a name is some means of identification; is it not? A Oh, yes.

Q Did you at any time, subsequent to that time, give the name of the man who was not apprehended, who was this defendant, three having been apprehended; did you give his name to the police?

A No, sir.

Q Did you know whether or not the police were looking for this defendant or another man concerned in the commission of this alleged crime? A Yes, sir.

Q And do you know for whom they were looking? A Yes, sir.

Q Did you know that they were looking for him, by name? A

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Q And you didn't give any name? A No, sir.

Q Now, this man had no disguise on at all? A No, sir; none ~~at all~~ of them.

Q Either by pulling his hat down over his eyes, or otherwise? A No, sir; none of them.

Q I may be confused-- between the testimony of the witness in the other case and in this case-- if I am, you may correct me, Mr. Horowitz and Mr. Donohue-- you heard the witness testify that the three men had their caps pulled down over their eyes? A No, sir; I didn't hear any such testimony; I wasn't here then.

Q Well, was that the fact or not? A No. This defendant, to my idea, had no hat ~~any~~ at all.

Q Well, is it your recollection, or your idea? A Well, it is my recollection, Judge.

Q You have not seen the defendant since that time, until now? A No, sir.

BY MR. HOROWITZ:

Q You say, if I understand you correctly, you have lost six thousand dollars in this matter? A Yes, about that, in all.

Q And you did not feel very pleasant about it; did you? A No, sir; I certainly did not.

Q Did they catch the other two men that night? A No, one man.

Q But you knew this man; didn't you? A Yes.

Q And you knew him by face and by name? A The second name.

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Q The second name? A Yes.

Q And you were very anxious to get him; weren't you? A Yes.

Q And do you mean to tell this jury that you didn't tell the police officer--

THE COURT: Anything that he says, Mr. Horowitz, he means, I assume. The form of the question is a little objectionable.

MR. HOROWITZ: Then I will withdraw that question.

Q Now, despite the fact that you had been held up in a cold-blooded robbery, and had lost between four and five thousand dollars cash, and you knew by face and name one of the men who perpetrated that atrocious crime, yet you did not tell the police his name; is that right? A I don't recollect whether I did or not; I don't know whether I did or not. There was so much confusion and excitement, that night, I don't recollect.

Q Well, you were in the station house; weren't you? A Yes.

Q You heard others give a description of the man; didn't you? A Certainly.

Q The other men didn't know this man's name; did they? A I don't know.

Q And yet you didn't step up and say "Officer, I know one of the men by name?" A I don't recollect.

Q You don't recollect? A No, sir.

Q Well, you weren't so excited a week after; were you? A No, sir. It was on my mind, but I was not so excited about it.

Q Did you go to the police and say, "I know the missing man

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by sight and by name?" A I did not, sir.

Q And the first time that you publicly mentioned his name, when you saw him here in court, this morning? A I believe so.

Q Now, didn't you tell us this morning-- Question withdrawn. Have you spoken to Officer Murray, since we took a recess in this case? A Officer Murray?

Q Yes. A Yes.

Q And Officer Murray told you in that conversation that you had never mentioned his name to him; didn't he? A Well--

Q Didn't he? A Officer Murray told me what?

Q Did you discuss the fact as to whether you did mention the defendant's name to Murray, or no, during that conversation? A No.

Q Well, didn't you say, this morning, that you did tell the police this defendant's name? A Well, you are talking about my going out, and seeing Officer Murray, a little while ago.

Q (Question repeated). A Well, during the interval, I did; since the case.

Q Didn't you say so a moment ago, when I asked you whether you mentioned his name? A Well, I knew what you are driving at, and I want to explain it.

Q Well, explain. A Well, we were talking different times about mentioning the man's name, and that is the time I may have mentioned it. I didn't go up to the police and say, "Why, this is this fellow's name."

Q Well, did you ever talk to Officer Murray about this man,

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by name? A By name?

Q Yes. A No, I just called him by his nickname that they call him. That is all.

JOSEPH GOLDSTEIN, of 740 East Fifth Street, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. DONOHUE:

Q Now, you were in Mr. Scharf's house on the 25th of April, of last year? A Yes.

Q And you were engaged in a crap game there? A Yes.

Q Now, you were held up? A Yes.

Q Now, tell us that, briefly. A There was a knock at the door, and three men entered, with drawn revolvers in their hands, and they ordered us from one room into another room.

Q And what happened after that? A And they told us all to put up our hands, and face the wall.

Q And was anything taken from you? A Yes.

Q How much? A \$210.

Q And how many men, altogether, had revolvers? A Three men.

Q Now, do you see any of those three men in court now? A No, sir.

Q Do you remember how these men were dressed? A Yes, sir.

Q How were they dressed? A They wore caps.

Q All wore caps? A Yes-- no, two wore caps, and one had a soft hat on.

Q Any of them without a hat? A No, sir.

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

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Q Did you ever get your money back? A No, sir.

Q Now, do you know this gentleman, who testified here before you, Mr. Bochner? A Yes.

Q Was he in the crap game, thatnight? A Yes.

Q And was he there, when these three men came in? A Yes, sir.

Q And no other three men came in, with revolvers, except the one group that came in; is that right? A Well, that is all I seen.

Q Well, they were the only men with revolvers there, that night? A Well, Larry had a revolver, too.

Q Larry who? A Larry Bochner.

Q Well, did he take out his revolver while the other men were holding you up? A No, sir.

CROSS-EXAMINATION BY MR. HOROWITZ:

Q Now, you testified in the other case, this morning; didn't you? A Yes.

Q And you testified that youknew the defendant; didn't you? A Yes.

Q And how long have you known him? A About fifteen years.

Q And you are positive that he is not one of the three men?

A Yes, sir/

Q And, if he had been, you would have recognized him? A Yes.

Q Did the men have their caps over their eyes, when they came in? A Yes, except the man that had the soft hat.

Q How many guns did each man have? A Two guns.

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MR. HOROWITZ: That is all.

BY THE COURT:

Q Now, just a minute. Did you know this defendant by name?

A Yes.

Q And you have known him for fifteen years? A About fifteen years.

Q Did you give this man's name to the police, that night? A No, sir.

Q You talked with the police, didn't you, that night? A Yes, about the case.

Q And the police asked you if you knew any of the men? A Yes, sir.

Q And you didn't give this man's name to the police? A No, sir.

Q So that, at that time, you didn't know him to be the man; did you? A No, sir.

Q Now, look at him. Will you say that he is not the man, or is your statement that you cannot say whether he is or not?

A To my knowledge, he is not the man.

Q What do you mean, to your knowledge? A Well, as far as I could see.

Q As far as you can see, he is not the man? A Yes, sir.

Q Does he look like the man? A No, sir.

Q And, that night, if you had recognized him, you would have been able to give his name to the police? A Positively.

THE COURT: Is this the complainant in this case?

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MR. DONOHUE: Yes, sir.

BY THE COURT:

Q Now, you put up your hands; did you? A Yes.

Q And one of the three men went through your pockets? A Yes.

Q Was it the man who wore a cap, who went through your pockets, the fellow that was unknown, the fellow who was arrested and subsequently tried? A Yes.

Q How much was taken from your pockets? A Two hundred and ten dollars, cash.

Q Anything else? A That is all.

Q And did he have a gun in his hand? A Yes, sir.

Q And the other two men had guns? A Yes, sir.

Q Had anybody spoken to you about this case, or threatened you, and told you to say that this was not the man? A No, sir.

Q No one spoke to you about not identifying the man who robbed you, when the police were sent for? A No, sir; nobody.

Q Was Mr. Bochner there when the police came? A Yes.

Q And was he in the station house, do you recall, when the descriptions were being given and taken down? A Yes.

Q Did you talk to Mr. Bochner about who were the men engaged in this act? A No, sir.

Q And he didn't say to you, "I know the names of the men who were engaged in this"? A No, sir.

Q Had you got your money back? A No, sir.

Q Has anybody promised to give your money back? A No, sir.

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RE-CROSS-EXAMINATION BY MR. HOROWITZ:

Q You immediately were taken to the station house, when this happened? A We were not taken; we went over there.

Q And you felt very bitter towards the men who took your money; didn't you? A Yes.

Q And the police asked you for descriptions of the men? A Yes.

Q And if you had recognized a man that you had known for fifteen years, and knew his name, you would have told the police his name; wouldn't you? A Yes.

Q And given a description of him? A Yes.

Q But you told the police, right there and then, you did not recognize either of the men? A Yes, sir.

MR. DONOHUE: That is the People's case, if your Honor please.

MR. HOROWITZ: Aren't there other witness here, who testified in the other case?

THE COURT: Witnesses who testified for the People?

MR. HOROWITZ: Yes, sir.

THE COURT: Perhaps the District Attorney does not want to call them.

MR. DONOHUE: I don't.

MR. HOROWITZ: I move then to take the case from the jury, and dismiss the indictment, on the ground that the People have failed to make out a case under any count of the indictment.

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THE COURT: I will deny the motion. It is for the jury to pass upon the weight and value of the testimony.

MR. HOROWITZ: And the denial of this motion does not mean that your Honor entertains any opinion regarding the guilt or innocence of this defendant? Will your Honor say that to the jury?

THE COURT: Yes, I say it to the jury. You have probably been told, gentlemen of the jury, during the term, thus far, that the value and weight of the testimony is to be passed upon by you, and not by the Court; and that the Court, in denying this motion, only rules upon a question of law, and rules that there is a question of fact for you to determine.

MR. HOROWITZ: We take an exception.

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THE DEFENSE

J A C O B G I N S B E R G , indicted as Henry Ginsberg,
the defendant, of 3 Amboy Street, Brooklyn, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. HOROWITZ:

Q How old are you, Jacob? A I am twenty-two years of age.

Q Twenty-two? A Yes, sir.

Q And who do you live with, in Brooklyn? A Why, I did
live with my folks, but, when my mother died, I moved downtown,
to 247 East Houston Street.

Q What is your business? A Painter.

Q Who do you work for? A For the High Grade Automobile
Painting Company.

Q Where is their place of business? A 392 East 135th Street.

Q How long did you work there? A Since 1919, since I was
discharged from the Army.

Q Now, when did you enter the Army? A I enlisted June 6,
1918.

Q How long was that after President Wilson had called
for volunteers, or called for the Draft? A I enlisted while
the Draft was on. I was under age.

Q You enlisted before your name was reached? A Yes. And
I got discharged on April 23rd, 1919. About eleven months, I
was in the Army.

Q Were you on the other side, during the war? A Yes, sir.

Q In France? A Yes. I arrived in France on August 16, 1918.

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Q Did you participate in any battles? A Yes, the Argonne Forest.

Q How long were you in the Argonne Forest? A Well, about six months, until I got influenza, and was sent to the hospital, and I was there for about four months, and then I was sent back to the United States, from the hospital.

Q And were you honorably discharged? A Yes.

Q Is this your discharge, this paper (indicating)? A Yes, sir.

MR. HOROWITZ: I offer it in evidence.

MR. DONOHUE: No objection.

(It is marked Defendant's Exhibit A)

Q Now, Ginsberg, you have been indicted in this case under the name of Henry Ginsberg. Did you ever use the name of Henry Ginsberg? A No, sir.

Q Anywhere, at all? A No, sir; never did.

Q You have been -- you are charged in this case, with having, with two others, on April 25th, 1920, entered premises on Fifth Street, where a game of crap was in operation, with others, and with guns, attack the people in that room, and back them up against the wall, and went through their pockets, and took whatever money or valuables they had. Did you do that? A No, sir.

Q When were you arrested? A In 1915.

Q No, I mean in this case here; on October 28th, was it not? A Yes, latter part of October.

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Q Of this year? A Yes.

Q And when the officer told you about the charge against you, what did you say to him? A I told him I didn't know anything about it.

Q And you had been convicted in 1915 for what? A Disorderly conduct.

Q Disorderly conduct? A Yes, sir.

Q And were you convicted after that? A No, sir.

Q 1915 was the last time you were convicted of any offense? A Yes.

BY THE COURT:

Q Was that the only conviction? A Yes.

Q And what happened to you? A Why, I was sentenced for six months.

BY MR. HOROWITZ:

Q You had two convictions of disorderly conduct, and got six months on each; didn't you? A Yes.

Q And the last was in 1915? A Yes, sir, or 1916. I don't remember exactly the year. I know they were a year apart.

Q Now, this witness Bochner, did you ever see him in your life before? A No, sir; I don't know him.

Q Did you ever speak to him? A No, sir.

Q Did you, that night, or any other night, hold him up with a gun, and take his money and jewelry? A No, sir.

MR. HOROWITZ: You may examine.

CROSS-EXAMINATION BY MR. DONOHUE:

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Q What name are you known by, outside of Ginsberg?

A Why, Jack Ginsberg.

Q Don't they call you "Doggie"? A No, sir. I have a brother they call "Doggie". One of my brothers is called "Doggie".

Q Aren't you known as "Little Doggie"? A No, sir.

Q And isn't your brother known as "Big Doggie"? A No, sir.

Q Well, they call him "Big Doggie", don't they? A No, sir, just "Doggie".

Q How many times have you been convicted, ^{did} you say? A Twice.

Q Now, just think. Only twice? A Yes, sir.

Q Well, you were in the Jewish Protectory; were you not?

A No, sir. My name is Jacob, sir.

Q Jacob Ginsberg? A Yes, sir.

Q Weren't you in the Jewish Protectory? A No, sir; I was not.

Q In 1906? A No, sir.

Q Are you sure? A Positively sure. My fingerprints can identify me.

Q When, for the first time, were you convicted of disorderly conduct? A 1915.

Q And when for the second time? A 1916.

Q Is that all the times you were convicted? What about a conviction before Judge Ten Eyck, seven years ago, in 1914? A No, sir.

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5 Q Well, you were convicted in 1915; weren't you? A Yes.

Q How old were you then? A Fifteen, I think.

Q Well, don't you know? A No, sir.

Q When were you twenty-two? A Why, this February 1st, I will be twenty-two.

Q The coming February? A Yes.

Q February 1st? A Yes, sir.

Q How old were you when you enlisted in the Army? A Eighteen and a half, going on nineteen.

Q Then you were not in the Draft; were you? A No, sir.

Q Well, you said before you enlisted before your name was reached in the Draft.

THE COURT: No, the counsel said that, and he said, "No, I was under age".

BY MR. DONOHUE:

Q Didn't you sign up for the Draft? A No, sir; because I was under age.

Q Didn't you fill out a questionnaire? A No, sir.

Q Where did you enlist, did you say? A New York City.

Q Where? A In 14th Street -- no, in 8th Street and Third Avenue.

Q As a matter of fact, you were drafted and sent to Camp Upton; weren't you? A I wasn't sent to Camp Upton. The whole regiment was sent there before we went across.

Q And where were you sent to, right after you enlisted?
A To Fort Slocum, with the whole regiment. I was first sent to the 8th Field Artillery, and they were stationed then at

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Camp Jackson, South Carolina.

Q But, right after you enlisted, as you say, where were you sent to? A To Camp Jackson, South Carolina, 8th Field Artillery.

Q But not immediately after you enlisted; were you? What camp were you in then? A Fort Slocum.

Q And from there, you went to Fort Jackson? A Yes, sir.

Q And what was the company that you were attached to? A I didn't have no company. I was with Company 21, but I was only there for a few days, and then I went to Camp Jackson.

Q Were you attached to Headquarters at any time? A I was, in Fort Slocum, but was just assigned to any company, as any new recruit would be, until they got transportation to where they were to be assigned.

Q Now, you say that you were not convicted in 1916, and sent to the Jewish Protectory? A No, sir.

Q And in 1914, you were not convicted before Judge Ten Eyck, and sent to the Workhouse for six months? A Now, listen. I may be behind a year or so, and I want to say, no, but I know I was convicted to the Workhouse twice, and it might have been a year before, or two years.

Q Well, seven years ago you would be just fourteen years. Did you realize that? A Yes, sir.

Q And do you say that Judge Ten Eyck sent you, a boy of fourteen, to the Workhouse for six months? A Well, I might have given a different age, at that time.

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Q Well, did you give a different age? A I don't remember, sir, it is so far back.

Q Well, you were sent to the Workhouse then? A I admit that, sir.

Q And what was the disorderly conduct, what were you charged with? doing? A Pushing, I believe.

Q Pushing and jostling; isn't that right? A I know it was pushing.

Q It was an attempt to pick a pocket; was it not? A No, sir.

Q Well, why were you sent for six months to the Workhouse for pushing? A Well, yes, it was for pushing.

Q And whom did you push? A I didn't push no one.

Q Well, why do you say you were sent to the Workhouse for pushing? A I was accused of pushing somebody, but I don't know who it was.

Q Well, in what way did you push that person? Can't you tell us? You just walked along, and pushed some man like that (illustrating), and you were arrested, I suppose? A Well, I was watching the moving picture show.

Q You were arrested in a crowd; weren't you, at a moving picture show? A No, sir; there was no crowd there.

Q Well, there was more than one person; was there not? A Yes.

Q And the police officer testified that you attempted to pick pockets, and that he had watched you for some time?

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A No, sir; that I was only pushing.

Q And the judge sent you for six months to the Workhouse, just for pushing in a crowd? A Yes.

Q And, ofcourse, you were innocent? A Yes.

Q And, the following year, were you sent to the Workhouse for six months? A Not the following year.

Q What year was it, then? A The second time it was for pushing.

Q Well, what kind of pushing? A Well, I used to used to peddle with a pushcart -- and I had a little instrument on that, that I used for work, and it was picked out of my pushcart.

Q Well, then that was not pushing; was it? A Well, that was what they charged me with.

Q Well, it was for jostling and pushing; wasn't it? A I don't know what jostling means.

Q Well, you were convicted in that instance, of attempting to pick pockets in a crowd? A Nos, ir.

Q Was there a crowd around then? A No, sir.

Q Well, you say you were sent to the Workhouse for six months, because you had some sort of an instrument, or machine on your push cart? A Yes, sir.

Q Have you been convicted since then? A No, sir.

Q Do you know James Kerr? A No, sir.

Q Or Herman Pedrofsky? A No, sir.

Q And you don't know Lehr? A No, sir.

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Q Do you know Mr. Bochner, this gentleman who testified here this morning? A No, sir.

Q Did you ever hear of him before this morning? A No, sir.

Q Do you know how your brother knew him? A No, sir.

Q But you know that your brother talked to him, this morning? A No, sir.

Q As a matter of fact, hasn't your brother gone around, and seen everyone of these witnesses-- A No, sir.

Q But how did you know what I was going to say? A Well, he told me he doesn't know it.

Q Oh, you have already talked with your brother about it, have you not, about this case? A No, sir.

Q Well, did your brother tell you that he had been talking with these witnesses? A No, sir; he said he didn't know these people.

Q Well, when did you speak to him about talking with these witnesses? A I never spoke to my brother about anything like that.

Q Well, how do you know that he don't know them?

Objected to. Objection sustained.

Q Didn't you say before that your brother didn't know these witnesses? A Yes, I did say it.

Q And when did you talk to your brother about his knowing these witnesses? A About two weeks ago, I asked him if he knew the party that makes the complaint against me, and he says no, he don't know any of them.

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Q Which brother was that? A Why, Edward Ginsberg.

Q Edward? A Yes, sir.

Q Did you ever talk to Buchner? A As I said before, I don't know him, and how could I talk to him?

Q Where did you live, in April, 1920? A 247 East Houston Street.

Q 247 East Houston Street? A Yes.

Q How long did you live there before that? A Well, my brother lived there all the while, and I lived with him.

Q And how long did you live there with him? A For the past four years.

Q For four years before April, 1921? A Yes, my brother lived there.

Q Well, didn't you live there, too? A Yes, I lived there.

Q By the way, how far is East Houston Street, where you lived, from 738 East Fifth Street? A I know where Fifth Street is, but I don't know where 738 is.

Q What did you do for a living during those four years?
A Painter.

Q When did you start in being a painter? A Just before I enlisted in the Army, about four months before, I became a painter.

Q And who were you working for at that time? A The High Grade Automobile Painting Company.

Q And where were they located at that time? A 392 East 135th Street.

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Q And how long before the war, did you work for them, Mr. Ginsberg? A About four months.

Q Did you ever have any trouble with Bochner? A No, sir; I don't know him.

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

Q And never heard of him before this case? A No, sir; I don't know him.

Q Do you know any of the other witnesses in this case, Mr. Joseph Goldstein, for instance? A I know one of them; I went to school with one of them.

Q Which one? A The small one.

Q Is that the boy you went to school with (indicating Joseph Goldstein)? A Yes, I went to school with him in 12th Street, some years back.

Q Doesn't your brother know him, too? A I don't know if my brother knows him or not. I didn't see him until now.

Q You never saw him until now? A No, sir -- that is, I never saw him until now.

Q What do you mean by that? A Well, I never saw him -- I mean that I didn't have anything to do with him and never seen him until now.

Q Don't you know, as a matter of fact, that your brother gave him back the money that was taken in this hold-up? A No, sir.

Q And don't you know that all the witnesses in this case, except Mr. Bochner, got back their money? A No. Mr. Bochner

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doesn't know him. How could he give him back his money?

MR. DONOHUE: That's all.

THE COURT: Mr. Horowitz, if you object to the question as to whether he knows that his brother repaid the complaining witness the money that he claims was taken from him, that involves an assumption that a certain thing occurred, and, if you object, I will sustain the objection.

MR. HOROWITZ: I intended to wait until the case was closed, and then ask the District Attorney to prove it.

THE COURT: Do you object now?

MR. HOROWITZ: No, sir, because I want to make him prove it.

THE COURT: Then if there is no objection, the question and answer may stand.

MR. DONOHUE: That's all.

MR. HOROWITZ: I have no further questions.

LOUIS SCHARF, of 805 East Fifth Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOROWITZ:

Q Mr. Scharf, you testified in the other case against the defendant; did you not? A Yes, sir.

Q You were in this crap game, and were held up? A Yes, sir.

Q And how much did you lose? A Sixty-five dollars.

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Q Did you know this defendant before? A No, sir.

Q Did you ever see him before? A No, sir.

Q Did you ever look at the three men who committed this robbery, that night? A Well, I seen the other two. I didn't see the third one.

Q And you couldn't say whether this man was the third man, or not? A No, sir.

Q Well, you were in the room; weren't you? A Yes.

Q Why didn't you see the third man? A Because my back was turned to the wall.

Q And you can't identify this defendant? A No, sir.

CROSS EXAMINATION BY MR. DONOHUE:

Q How many people have been to see you about this case?

A Nobody.

MR. DONOHUE: Mr. Edward Ginsberg, please stand up.

Q How often did you talk to that man about this case? A I never talked to him in my life.

Q Didn't you get back the money, all the money, you lost in that hold-up? A No, sir; not a nickel.

Q Did anybody speak to you about giving it back to you? A No, sir.

Q How long have you lived at East Fifth Street? A About two years.

Q Two years? A Yes, sir.

Q And don't you know the Ginsbergs? A No, sir.

Q Sure? A Yes.

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Q Did they live in Houston Street? A I never knew them.

Q And never heard of them? A No, sir.

Q And you have never spoken to a soul about this case? A No, sir.

Q You are positive about that? A Yes, sir.

Q How much did you lose in this hold-up, Mr. Scharf? A Sixty-five dollars.

Q Sixty-five dollars? A Yes, sir.

Q Was this a crap game that took place at certain times, Mr. Scharf? A No, sir.

Q Well, what was it? Just a friendly game, gotten up on the spur of the moment? A Well, we first had a little card game.

Q You didn't take what is commonly called a "cut"; did you? A No, sir.

Q How many men were engaged there, in the crap game? A Fifteen, sir.

Q When was the first time you saw the defendant? A Just now.

Q This morning? A Yes.

G E O R G E M U R R A Y , of the 15th Precinct, Detective Bureau, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOROWITZ:

Q You are a police officer attached to the Police Department of the City of New York? A Yes, sir.

Q For how long have you been so attached? A For nine years.

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Q Attached to the Detective Bureau? A Yes.

Q You arrested the defendant when? A On October 25th, I think it is, 1921.

Q Was it not October 28th? A I will look at my book. October 29th.

Q And did you tell him that he was charged with robbery in this case? A Yes.

Q And what did the defendant say? A He denied ever taking part in the hold-up.

Q He said that he knew nothing about it? A Yes.

MR. HOROWITZ: That is all.

MR. DONOHUE: No questions.

BY THE COURT:

Q You saw these various witnesses, the night of this alleged robbery? A I did.

Q Did any of them give to you this defendant's name as one of the persons participating therein? A They did not.

Q Did you see Joseph Goldstein, the witness here, that night? A I did.

Q You heard him say here that he knew the defendant by name? A I did.

Q Did he, on the night of the alleged robbery, give to you the name of this defendant? A He did not.

Q Did you inquire from him the name of the person who held him up? A I did.

Q Did he say he knew the name? A He said he did not.

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Q Did he know, if you know, the other two men that were arrested? A I can't say, sir.

Q You saw Mr. Bochner; did you? A Yes.

Q Did you inquire from him if he knew the name of any of the persons who had participated in this alleged robbery? A I did.

Q You asked him that; did you? A Yes.

Q And what, if anything, did he say? A He said he didn't know them by name.

BY MR. HOROWITZ::

Q That is this stout gentleman, Bochner? A Yes, sir.

Q You asked him if he knew any of these men by name, and he said no? A I questioned them all when they were sitting in the rear room, the sitting room of the station house, and none of them knew the men by name.

BY THE COURT:

Q Then you didn't ask each person who was in the station house, individually, as to whether they knew the men, but what you mean is that you addressed your remark to them as a body? A As a body, yes. I asked them if they knew any of the men by name, and they said no.

Q And your questions then, were not addressed directly and personally to Bochner, or any other man there? A No, sir.

BY MR. HOROWITZ:

Q But Bochner was there? A Yes.

Q And he didn't step up, and give you the name of any of the men? A No, sir.

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BY THE FOURTH JUROR:

Q Bochner testified, this morning, that you were a personal friend of his. A I know him from working in the precinct.

Q And have you met him several times, during the last year?
A Yes.

Q And he never mentioned anything about this defendant to you? A Not that I remember.

CROSS EXAMINATION BY MR. DONOHUE:

Q Well, did he say anything at all to you about Ginsberg, during the past year? A Not that I can remember.

Q Did you talk to him about Ginsberg at all? A No, I didn't.

Q And did you tell him that you had arrested Ginsberg? A I didn't.

Q Have you seen him since you arrested Ginsberg? A I seen him in court here, may be once or twice.

Q When, Murray? A That's since Ginsberg has been arrested.

Q Did you see him in court, this morning? A I did not; not until the time he walked up before the Bar.

Q Do you know Ginsberg's brother? A I do.

Q Do you know him by sight? A I do.

Q Do you know him to talk to? A Yes.

Q Did you see him and Bochner talking, this morning? A No, sir.

Q Did you see Bochner and Edward Ginsberg together, at any time? A I did not.

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RE-DIRECT EXAMINATION BY MR. HOROWITZ:

Q Officer, you say that you have seen Mr. Bochner here once or twice since this case has been on? A Yes.

Q And, if you had known that he knew the defendant, you would have taken him to Mr. Donohue; wouldn't you? A Yes.

Q You knew that Mr. Donohue was looking for witnesses as to the identity of the defendant? A Yes.

BY THE COURT:

Q None of these witnesses whose names are mentioned, had an opportunity to see this defendant; did they? A They did not.

Q He was indicted without -- He was indicted on the 30th day of April, without being seen by any of them.

Q And Mr. Brochner didn't have any chance to see him before, either? A He did not.

BY THE EIGHTH JUROR:

Q Did you ever see the defendant, previous to the day of his arrest? A I did not.

Q How did you come to arrest him? A I was informed by the--
MR. HOROWITZ: I object.

THE COURT: Ofcourse, Mr. Juror, that is a dangerous question in this case, because you are calling now for the operation of his mind, which may include heresay declarations of what somebody said to somebody else, or to him, and the result may be that we will have an answer which may bring in incompetent

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evidence. It may be just rumor, or heresay.

THE EIGHTH JUROR: Well, can't we get an expression from the officer as to whether this is all heresay or not?

THE COURT: No, you can easily see how that will bring into play a lot of objectionable information. If we can limit it to some direct statements, it may be competent. May be we can get it for you. Suppose we ask this:

BY THE COURT:

Q An indictment was handed down by the Grand jury, naming the defendant; was it not? A Yes, sir.

Q Do you know how the Grand Jury got the name of the defendant? A I do not.

Q And you got a bench warrant for this man? A Yes.

Q Now, when did you get the bench warrant? A I received the bench warrant on the 30th of May, 1920.

Q 1920? A Yes.

Q And you located him in October, 1921? A Yes, sir.

THE COURT: Does that cover it, Mr. Juror?

THE JUROR: Part of it, yes.

BY MR. HOROWITZ:

Q You know that the Grand Jury indicted him as Henry Ginsberg; don't you? A Yes.

BY THE COURT:

Q Did Mr. Bochner appear before the Grand Jury? A No, sir.

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THE COURT: Now, I am trying to get as much as I can for the juror, without asking prohibited questions, though these questions really come very near the line.

BY THE COURT:

Q He was arrested on a description? A Yes, sir.

Q And arrested under a designated name? A No, sir; the arrest was made under his name, after he had been indicted, and I had his name.

MR. HOROWITZ: Now, if your Honor please, I must object, I am afraid. This will lead to heresay.

THE COURT: No, I think not. I am trying to give the juror the information sought, and trying to avoid any error that might creep in under the question, "How did you come to arrest him?" Will that be satisfactory, Mr. Juror?

THE JUROR: Yes, sir.

BY MR. HOROWITZ:

Q You didn't know this defendant before that; did you?

A I did not.

EDWARD GINSBERG, of 247 East Houston Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOROWITZ:

Q You are a brother of this defendant? A Yes.

Q Are you married? A Yes.

Q And live there with your wife? A Yes.

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Q How long have you lived there? A For the past two years.

Q Now, what is your business? A Taxicab, for hire.

Q Where is your office? A 247 East Houston Street.

Q Now, were you in court, this morning, at your brother's trial? A Yes, sir.

Q Were you there -- did you see this man Bochner -- stand up, Mr. Bochner. A No, sir.

Q Did you see him at any time, this morning? A I saw him this afternoon, when the court was starting in.

Q Before the adjournment? A Yes.

Q Did he call you anywhere? A He called me out in the hallway, and asked me for five hundred dollars for his pin; otherwise he is going to send my brother to jail. He said he wouldn't pull off for less than five hundred dollars, and I said, "I have no money, and, in the first place, he is innocent".

Q And what did you do then? A I went back into court, and he jumped up, and come up in front here, because he didn't get five hundred dollars.

CROSS EXAMINATION BY MR. DONOHUE:

Q How many times have you been convicted? A None.

Q Why, weren't you in the Magistrate's Court, convicted of disorderly conduct? A Well, that was strike duty.

Q How many times did that happen? A Twice.

Q And you were charged with disorderly conduct; were you not? A Yes.

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Q And how many other times were you convicted, besides that? A None.

Q Weren't you convicted in Special Sessions for disorderly conduct? A Yes.

Q I mean downstairs, in this building? A No, sir.

Q Where were you convicted? In what court? A In Brooklyn.

Q Special Sessions, in Brooklyn? A Yes.

Q And what was the charge over there? A On strike duty, in a scrap.

Q You were charged with assault; were you not? A Yes, during a strike.

Q You were charged with assault; is that right? A Simple assault.

Q Was it not assault? A I have no idea what kind of assault it was. It was on strike duty.

Q What sentence did you get? A A hundred dollars fine.

/Q What did you have with you, when the officer picked you up? A Nothing at all.

Q Didn't you have a revolver? A No, sir; nothing at all.

Q Well, what were you convicted off? A Well, there's a lot of people in that case.

Q (Question repeated) A For strike duty.

Q Were you convicted because you went on a strike? A Yes.

Q Three judges sat on the Bench, and convicted you because you went on a strike? A Well, there was three others.

Q How often have you been convicted? A Twice, of disorderly conduct.

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Q Twice for disorderly conduct? A Yes.

Q And once for assault? A Yes; twice altogether.

Q Only twice, altogether? A Yes.

Q Now, do I understand you to say that you don't know Mr. Bochner at all? A Yes.

Q And never saw him in your life until this morning? A No, sir.

Q And don't you know the Goldsteins? A No, sir.

Q Don't you know David Goldstein? A No, sir.

Q Or Joseph Goldstein? A No, sir.

Q How many times have you been over to the City Prison to see your brother? A Very few.

Q How many times, I ask you? A Twice.

Q And he has been over there since October, is that right?

A Yes, sir.

Q And you have been over to see him only twice? A Yes.

Q How many times did you go to see the Goldsteins? A None.

Q Or Scharf? A None.

Q Why, didn't you pay money to these witnesses? A No, sir.

Q Positive of that? A Very positive.

Q You are in the taxicab business? A Yes.

Q Where is your place of business? A 247 East Houston Street.

Q 247 East Houston Street? A Yes, sir.

Q And how long have you been in East Houston Street? A The past three years.

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Q And you don't know Mr. Louis Scharf, who lives at 738 East Fifth Street A No, sir.

Q Did you have in your employ, in April, 1920, a man named Joseph Lehr? A Nosir.

Q Are you sure of that? A Positive.

Q Did you have anybody by the name of Pedrofsky? A No, sir.

Q Are you sure of that? A Positive.

Q How old is your brother? A About twenty-two.

Q When is his birthday? A I couldn't tell you that.

Q You have no idea? A No, sir.

Q He is around twenty-two? A Yes.

Q Is he past twenty-two, or will be twenty-two his next birthday? A That I couldn't tell you. I haven't kept track of that.

Q You have no idea of that? A No, sir.

Q Did you ever see Mr. Bochner before you saw him in court, this morning? A No, sir.

Q Now, who called him out? Did you or somebody else? A No, nobody called him out. He turned around and motioned his head for me to come out (illustrating), and asked me for five hundred dollars, or he will send my brother to jail.

Q Now, give us his exact words, if you can? A He said he must have five hundred dollars for the pin he lost; that was what his pin was worth. He said he knew me, and he said he was one of the men in the house, and he said, "If you won't give me five hundred dollars, I'll send your brother to prison".

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Q Now, didn't he say, "If I don't get five hundred dollars, I'll go on the stand and testify?" A Yes.

Q But you wouldn't give him five hundred dollars? A No, sir; because I know he is innocent.

Q How do you know that? Were you there? A No, sir.

THE COURT: Gentlemen of the Jury: Do not discuss this case among yourselves or with others, and do not form or express any opinion about it, until the case is finally submitted to you.

The Court will now stand adjourned until tomorrow morning, at ten thirty o'clock.

(The further trial of the case was then adjourned to Tuesday morning, December 20th, 1921, at 10:30 o'clock)

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T R I A L R E S U M E D

New York, December 20th, 1921.

MR. HOROWITZ: The defendant rests.

MR. DONOHUE: The People rest.

MR. HOROWITZ: I ask your Honor to dismiss the indictment, upon the ground that the People have failed to prove any of the counts charged in the indictment.

THE COURT: Denied.

MR. HOROWITZ: Exception. And on the ground that the People have failed to establish the guilt of the defendant, beyond a reasonable doubt.

THE COURT: Denied.

MR. HOROWITZ: Exception. I would like to argue that motion.

THE COURT: It is for the jury.

MR. HOROWITZ: Exception.

THE COURT: You understand, gentlemen -- counsel requests me to make this statement, and it is law -- that the fact that I deny his motion is not any indication that I have any opinion whatever as to the guilt or innocence of the defendant, for I have none, and I have no right to have any. The Court's ruling simply means that I hold that there is a question of fact to submit to you.

MR. HOROWITZ: May I ask your Honor to take from the jury the count of Receiving?

THE COURT: Yes, I will take that count from the

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jury. I will submit the first count of the indictment, unless I am specifically requested to submit the others. I do not withdraw those from the consideration of the jury.

(Mr. Horowitz then summed up for the Defense and Mr. Donohue closed the case for the People.)

(The Court then admonished the jury, in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until 2:30 o'clock)

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