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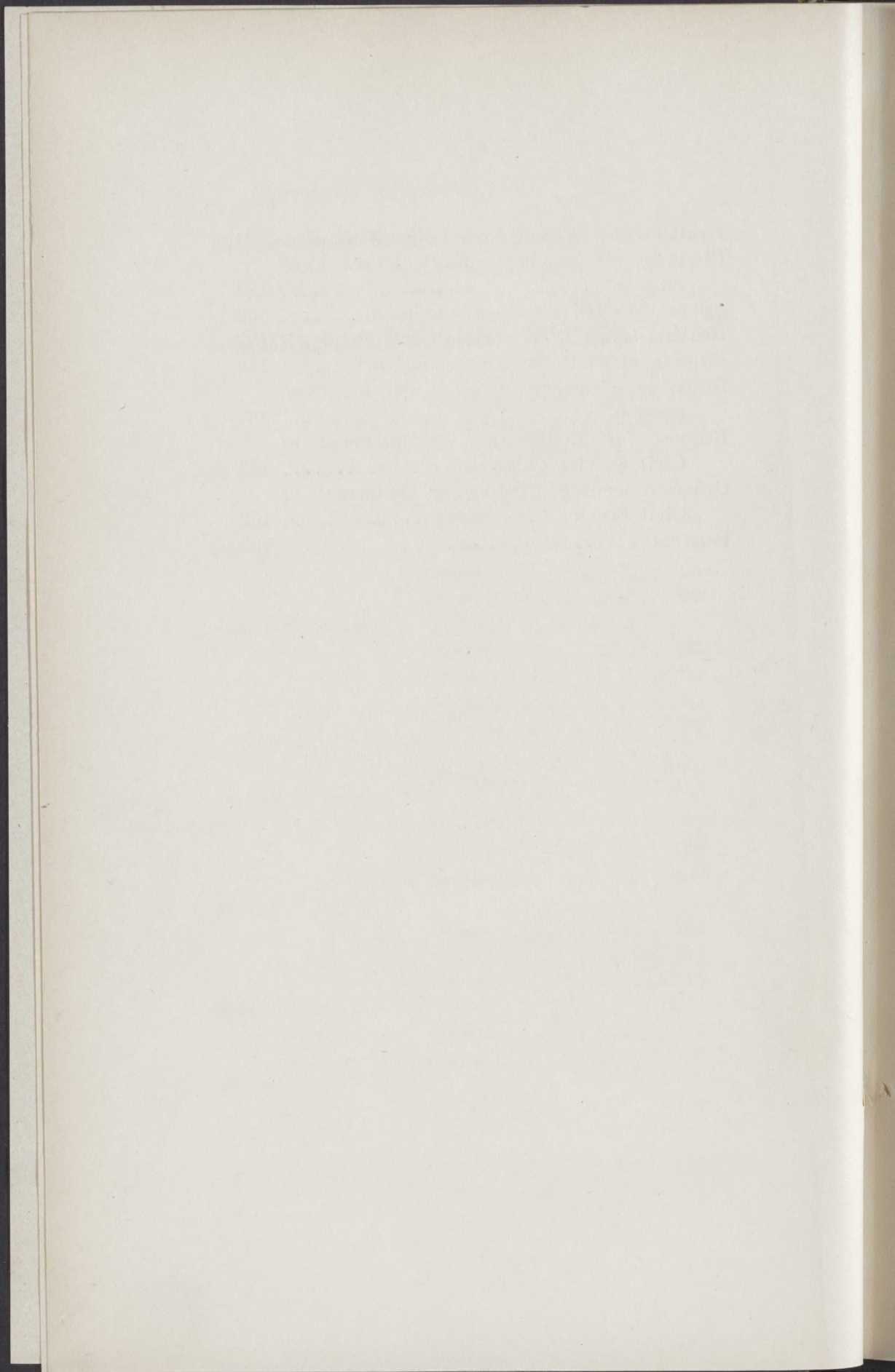
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Notice of Appeal—Grounds of Appeal.

(Filed—Sept. 12, 1930.)

New Jersey Supreme Court

THE COUNTY OF HUDSON AND
BOULEVARD COMMISSION OF THE
COUNTY OF HUDSON,

Prosecutors-Appellants,

v.

THE CIVIL SERVICE COMMISSION
OF THE STATE OF NEW JERSEY,
and THOMAS J. BROADHURST,
Defendants-Appellees.

On Certiorari.

10

20

Dear Sir:

PLEASE TAKE NOTICE that The County of Hudson and Boulevard Commission of The County of Hudson, the Prosecutors-Appellants in the above named cause, appeal to the Court of Errors and Appeals from the judgment entered in this cause, on the following grounds, viz.:

1. The Supreme Court erred in dismissing the writ of certiorari. 30

2. The Supreme Court erred in giving judgment for the Defendants instead of for the Prosecutors.

Yours very truly,

J. EMIL WALSCHEID,
Attorney for Prosecutors.

To

GEORGE E. CUTLEY, ESQUIRE,
Attorney for Defendants-Appellees.

40

Acknowledgment of Service.

(Filed—September 12, 1930.)

Service of the within Notice of Appeal and
Grounds of Appeal is hereby acknowledged this 8th
day of September, 1930.

10

GEORGE E. CUTLEY,
Attorney for Defendants-Appellees.

20

30

40

Writ of Certiorari.

NEW JERSEY, ss:

THE STATE OF NEW JERSEY TO THE CIVIL
SERVICE COMMISSION OF THE STATE
(Seal) OF NEW JERSEY. 10

GREETING: We being willing for certain reasons to be certified of a certain resolution or finding of The Civil Service Commission of the State of New Jersey, adopted or made on the third day of December, 1929, in the matter of the appeal of Thomas J. Broadhurst, a police officer of the County of Hudson to The Civil Service Commission of the State of New Jersey from a finding of the Board of Boulevard Commissioners of the County of Hudson reducing the said Thomas J. Broadhurst from the office of Lieutenant of Police to the office of Patrolman of Police, and reserving, vacating or setting aside the said finding of said Hudson County Boulevard Commission; 20

Do command you that the said resolution or finding so adopted or made by you on the date aforesaid in the matter aforesaid and all proceedings had before you leading up to the adoption or making of the same, or in pursuance thereof, made or pretended to be made, and all things touching or concerning the same as they may remain of record before you, by whatsoever name the same may be called therein, to our Supreme Court of Judicature at Trenton on the thirtieth (30) day of December, 1929, you do certify and send, together with this writ, that therein may be done what of right and according to law ought to be done. 30 40

Return.

WITNESS: WILLIAM S. GUMMERE, Esquire,
Chief Justice of our Supreme Court of Judicature,
at Trenton, this tenth day of December, in the
year One Thousand Nine Hundred and Twenty-
nine.

FRED L. BLOODGOOD,
Clerk.

10

J. EMIL WALSCHEID,
Attorney.

Allocatur.

I allow this writ. Let it be sealed. December
10th, 1929.

SAMUEL KALISCH,
J. S. C.

20

Return.

(Filed .)

NEW JERSEY SUPREME COURT.

30	THE COUNTY OF HUDSON and THE BOULEVARD COMMISSION OF THE COUNTY OF HUDSON, Prosecutors,	} On Certiorari. Return.
	v.	
	THE CIVIL SERVICE COMMISSION OF THE STATE OF NEW JERSEY and THOMAS J. BROADHURST, Defendants.	

40

Pursuant to the command of the within writ and
for a return thereto, the Civil Service Commission
does hereby certify to the Honorable the Justices

Charge or Complaint.

of the Supreme Court, the following papers in the above entitled matter:

1. Charge and finding of fact by the Boulevard Commissioners of Hudson County.

2. Testimony before the Boulevard Commissioners.

10

3. Appeal of Thomas J. Broadhurst.

4. Record of hearing before Civil Service Commissioner Ruhlman.

5. Report of Commissioner Ruhlman and judgment of the Civil Service Commission.

6. Petition addressed to the Civil Service Commission by Thomas J. Broadhurst, requesting an award of payment, &c.

20

7. Order amending order of Civil Service Commission.

CIVIL SERVICE COMMISSION OF THE
STATE OF NEW JERSEY.

(Signed) CHARLES P. MESSICK,
Secretary.

Charge or Complaint.

30

To the BOULEVARD COMMISSIONERS
OF THE COUNTY OF HUDSON:

I HEREBY CHARGE Lieut. THOMAS J. BROADHURST with willful and deliberate violation of the general order of the Hudson County Boulevard Police Department, as cited in paragraph general, pp. 17-18 of the Manual, in that the said Lieut. Thomas J. Broadhurst of the Hudson County Boulevard Police on or about September 28,

40

Notice of Hearing.

1929, at Headquarters, recommended to prisoners the name of counsel with a view to their defense, and did then and there solicit and procure counsel in their behalf and did negotiate for the purpose and object of escaping penalty of the law in such case made and provided,

10

BEING in violation of Rule General, pp. 17-18 of the Manual of the Hudson County Boulevard Police Department, adopted by the Boulevard Commissioners of the County of Hudson on the 4th day of April, A. D. 1923.

WILLIAM F. CLOSSEY,
Complainant.

Witness:

WILLIAM F. CLOSSEY.

20

Notice of Hearing.

BOULEVARD COMMISSIONERS OF
COUNTY OF HUDSON
P O L I C E

To THOMAS J. BROADHURST:

30 YOU ARE HEREBY NOTIFIED that your trial upon the charges, a copy of which is herewith served upon you, will be held on the 25th day of October, 1929, at the hour of 9:30 o'clock in the forenoon, at the office of the Board in the Court House, Jersey City.

WITNESSETH: Honorable Boulevard Commissioners of the County of Hudson at Jersey City, this 17th day of October, 1929.

JOHN P. McMAHON,
Clerk.

40

Hearing and Witnesses.

Special Meeting of the Boulevard Commissioners of the County of Hudson was held at the County Court House in the City of Jersey City, on Friday evening, November 1st, 1929, at eight o'clock.

Present—President KLEFFMAN, Commissioners MEISTER and CHAPMAN. 10

Absent—None.

Lieutenant Thomas J. Broadhurst appeared before the Board charged by Chief Clossey with violation of the rules of the Department prohibiting or recommending to prisoners the name of or suggesting counsel.

The hearing then proceeded as follows: 20

HUDSON COUNTY BOULEVARD COMMISSION.

In the Matter	}	
of		
The Charges of WILLIAM F. CLOSSEY, Chief of the Hudson County Boulevard Police,		30
Complainant,		
v.		
THOMAS J. BROADHURST, Lieu- tenant of the Hudson County Boulevard Police,	}	
Defendant.		

Before the BOULEVARD COMMISSIONERS OF HUDSON
COUNTY. 40

Specification.

Jersey City, N. J., November 1, 1929.

Present—THEODORE A. KLEFFMAN, Chairman.

JOHN G. MEISTER,

FRANK B. CHAPMAN,

Commissioners.

10

JOHN P. MCMAHON,

Clerk.

APPEARANCES:

JULIUS L. REICH, Esq., for the Complainant.

ALLAN BENNY, Esq., for the Defendant.

Chairman Kleffman: The Commission will come
20 to order, and the Clerk will read the charges.

The Clerk (reading): "I hereby charge Lieutenant Thomas J. Broadhurst, with wilful and deliberate violation of the 'General' order of the Hudson County Boulevard Police Department, as cited in paragraph 'General' pages 17-18 of the 'Manual.'

SPECIFICATION.

In this, that the said Lieutenant Thomas J.
30 Broadhurst, of the Hudson County Boulevard Police, on or about September 28, 1929, at Headquarters recommended to prisoners the name of counsel with a view to their defense, and did then and there solicit and procure counsel in their behalf, and did negotiate for the purpose and object of escaping the penalty of the law in such case made and provided.

Being in violation of Rule 'General', pages 17-18 of the Manual of the Hudson County Police
40 Department, adopted by the Boulevard Commis-

Thomas A. Madigan—Direct Examination.

sioners of the County of Hudson, on the 4th day of April, A. D. 1923.

(Signed) WILLIAM F. CLOSSEY,
Complainant."

The Clerk: How do you plead?

Mr. Benny: Not guilty.

10

Chairman Kleffman: Proceed.

Mr. Reich: At this time, gentlemen, I offer in evidence the Manual of the Hudson County Police Department, under the title of "General" pages 17-18, on which these charges are brought, and move that the same be marked in evidence.

Mr. Benny: No objection.

Received in evidence and marked C-1.

20

THOMAS A. MADIGAN, called as a witness for the complainant, being first duly sworn, testified as follows:

Direct Examination by Mr. Reich:

Q. Where do you live? A. 2240 Thirty-fifth Street, Long Island City, New York.

Q. Mr. Madigan, you were the owner and operator of an automobile in the City of Jersey City on the night of September 28, 1929? A. Yes, sir.

30

Q. And were you involved in an accident on that particular night? A. That is right.

Q. After the accident will you describe in your own words what occurred? A. After the accident we were taken to the Boulevard Police Station.

Q. Speaking of "we" who do you mean? A. My brother, another passenger in the car by the name of Edward Connors, and another one by the name

40

of James Dulligan. There were four of us. We arrived at the police station, and I had to give a statement. Mr. Broadhurst took the statement and I stated just how the accident occurred, and what happened up to that time. After that, after he took the statement, he took the statement of the rest of the fellows in my car. Then we were transferred to, I believe it was the 6th Precinct, and some other sort of paper was signed for some reason or other, and transferred again to the 7th Precinct, where we were searched and remained all night in that jail.

Q. What time of night was it when you were brought into the Boulevard Police Headquarters?
A. Approximately about ten o'clock.

Q. And what time was it when you were removed from the Boulevard Police Headquarters?
A. In about an hour, I should think.

Q. About an hour? A. Yes.

Q. Where were you going the night of this accident? A. To visit a friend that lived at 196 North Street.

Q. And what was his name? A. James Kirby.

Q. Never got there? A. No, sir.

Q. Was there anybody else in the office besides Lieutenant Broadhurst? A. Yes, sir.

Q. Do you know them? A. I saw them, yes.

Q. While these statements were being taken from you and the others in the car, were you in the room alone, or were the four of you—were the four statements taken at one time? A. The four were taken at the same time. I gave mine to another gentleman, and Mr. Broadhurst took the statements of the other three people in my car.

Q. Did you say anything about where you were going when you were removed from Boulevard

Police Headquarters? A. Did I say anything about where we were going?

Q. Yes? A. To whom?

Q. To anybody there on the desk, or Lieutenant Broadhurst? A. No, I didn't have any idea where I was going.

Q. Did you have any conversation with Lieutenant Broadhurst? A. No, sir. 10

Q. And after being taken to the Sixth Precinct did you stay there? A. Why, no, we didn't. We stood there and they made some sort of papers out and transferred us to another precinct, the 7th, I believe.

Q. By the time you got to the 7th Precinct what time was it? A. Well, on to morning, I believe about one.

Q. About one o'clock in the morning when you got to the 7th Precinct? A. Yes. 20

Q. And this accident occurred at what time? A. About nine, or nine fifteen; some such time.

Q. In the neighborhood of— A. Between nine and nine thirty, I would say.

Q. Were there police officers in Headquarters at the time you were brought in?

Chairman Kleffman: Were there police officers at Headquarters? Is that the Boulevard Headquarters you are talking of now? 30

Mr. Reich: Yes.

A. Yes, there were, in and out.

Q. How many officers brought you into Police Headquarters? A. One.

Q. Do you know who it was? A. No, I don't, but I imagine I could show you the man if I saw him.

Q. Will you look around over there and see if you can see the officer that brought you there? A. (Witness complies.) I wouldn't be certain of it, but there is a gentleman about his style about his size.

10 Chairman Kleffman: Indicating Officer Schechtle.

Q. He brought you in? A. Yes.

Q. Did he stay there while this was going on? A. Did he stay there while we were making the statements?

Q. While the statements were being taken? A. No.

Q. Did he go right out? A. I don't know where he went. I know he wasn't at the desk.

20 Q. But you didn't see him there? A. No.

Q. What happened after you were taken to the 7th Precinct?

Mr. Benny: I object to that if the Commissioners please, on the ground it is immaterial and irrelevant and incompetent.

30 Mr. Reich: If the Commission please, the object in this is to connect it up with future conduct which might be brought to the door of the man charged, and if it isn't it may be stricken out; it may be disregarded. We haven't any jury here, so I don't see that anything prejudicial can come of it.

Chairman Kleffman: Objection overruled.

(Question repeated by stenographer.)

40 A. We were taken upstairs and searched.

Mr. Benny: I object now to that question, and suggest that it would save time if counsel would agree to make my objection apply to all questions relating to what happened in the 7th Precinct Police station, on the ground that the questions are irrelevant, immaterial and incompetent.

10

Mr. Reich: I will agree to that, and I will further agree to have them stricken from the record if they are not connected up.

Mr. Benny: I do not make any such agreement. I let the objection stand.

Q. Go ahead? A. We were brought in there and were taken upstairs, and the gentleman at the desk searched us and relieved us of such articles as pencils and things like that, and we were put into cells, separate cells, stood there about twenty minutes, and people were going to visit us, that is, James Kirby, he came down with another gentleman friend of ours.

20

Q. You say James Kirby came down to see you? What time did he come down to see you? A. It was about twelve or twelve thirty, I imagine.

Q. How did he know you were in the 7th Precinct, if you know? Do you know where he got his information that you were at the 7th Precinct? A. I imagine Lieutenant Broadhurst told him, because he came down with him.

30

Q. Who came down with him? A. Lieutenant Broadhurst.

Q. Brought him down to the 7th Precinct? A. Yes.

Mr. Reich: Do you still want the objection to go in?

Mr. Benny: Yes. I understand now that it is agreed by counsel on the other side that

40

I have an objection on the ground that the questions are incompetent, irrelevant and immaterial, to all questions relating to what happened in the 7th Precinct Police Station.

Chairman Kleffman: Do both counsel agree on that?

10 Mr. Reich: We agree on that.

Chairman Kleffman: All right. Proceed.

Q. What happened in the 7th Precinct Police Station when Mr. Kirby and Lieutenant Broadhurst appeared? A. I asked if we couldn't all be put in together, so we could all spend the night together; it was a rather dark place, so Kirby went out and bought coffee back to us, and nothing happened to us after that except that we were put in a cell and remained there until morning.

20 Q. In the morning what happened? A. We were let out of the cell about six o'clock, and allowed to walk around, and walked around until twelve o'clock, when Mr. Kirby came down with a lawyer, Mr. Feinberg, and Mr. Feinburg secured our release, just exactly how I don't know. He got us out on bail.

Q. Did you know Mr. Feinberg? A. No, sir.

30 Q. Did you ever meet him before? A. Before that Sunday, no, I never did.

Q. Did you say anything to Kirby about getting a lawyer for you? A. Did I?

Mr. Benny: I object to that, especially because it doesn't make a bit of difference what he said to Kirby any more than what he said to his mother.

Chairman Kleffman: If it doesn't make any difference objection overruled.

40 Mr. Reich: I withdraw the question to save time.

Q. So you were released the following day and the others were also released? A. That is right.

Q. Are you sure that the man that appeared with Kirby at the 7th Precinct Police Station on the night of your arrest, after being taken from the Boulevard Headquarters, was Lieutenant Broadhurst? A. Am I sure that was the man that appeared that night? Certainly. 10

Q. Were you brought up in police court the next morning? A. The following day, yes, Monday.

Q. Who appeared for you? A. Mr. Feinberg.

Mr. Benny: I object to that, if you gentleman please. I don't know where we are going. We are getting in police court now on Monday.

Mr. Reich: If the Commissioners please, the charge is that he procured counsel. Now I will concede that Mr. Feinberg is counsel, and I will also concede that he acted for these men. Now I certainly think it is very material to show, where the charge stipulates very particularly that he procured counsel for these men, that he acted for them— 20

Chairman Kleffman: Objection overruled.

Q. Mr. Feinberg appeared for you in the police court? A. That is right. 30

Q. And you were bailed out, were you? A. Monday.

Q. Yes. A. Yes, after the hearing.

Q. Who arranged that? A. Mr. Feinberg.

Q. And after the hearing when you were bailed out did you hear from Mr. Feinberg again?

Mr. Benny: I object again on the ground that the question is immaterial. 40

A. No, sir.

Mr. Reich: The answer is no.

Mr. Benny: I don't know where we are going.

10 Chairman Kleffman: I don't know where we are going either. We have got to get into the merits of the case. We have got to get something to start on.

Mr. Reich: Take the witness.

Cross Examination by Mr. Benny:

Q. You say that Lieutenant Broadhurst came to the 7th Precinct Police Station with your friend Kirby? A. That is right.

20 Q. Who else was there? A. The three fellows that were held prisoners with me.

Q. Was there a keeper or man connected with the 7th Precinct there? A. Yes, sir.

Q. When Kirby came in was a friend of Kirby's with him? A. That is right.

Q. They were your two friends? A. That is right.

Q. Then there was Lieutenant Broadhurst? A. That is right.

Q. And who else? A. The keeper.

30 Q. The keeper of the jail? A. Yes.

Q. All together? A. Yes.

Q. Stayed there together all the time? A. Well, a few words we had to say, and said, yes.

Mr. Benny: That is all.

Re-direct Examination by Mr. Reich:

Q. What time was it, Madigan, that Lieutenant Broadhurst showed up at the 7th Precinct with Kirby, if you remember? A. It must have been
40

near twelve, I imagine. You see we didn't have any idea of the time, things were happening so fast. That is the best of my recollection.

Re-cross Examination by Mr. Benny :

Mr. Benny : I served notice on Chief Clossey to produce a lot of papers. Have you got them? 10

Mr. Reich : What papers are those?

Mr. Benny : Affidavits and statements.

Mr. Reich : We have them here, but I don't see that any papers the Commission has concerns the defendant. Certainly the State is never required to show its hand to the defense under any circumstances.

Mr. Benny : Is the Chief of Police here?

Mr. Reich : Yes. 20

Cross Examination by Mr. Benny :

Q. Did you sign an affidavit about this matter?

A. Just about what took place.

Q. When did you sign that affidavit? A. Do you want the date?

Q. Yes. A. I just don't remember.

Q. How soon after you got out of the court that Monday you spoke of? A. About the end of that week, I imagine. 30

Q. Sign more than one statement or affidavit?

A. One, I think. One or two; I wouldn't be sure of it.

Q. How did you come to sign this affidavit you speak of?

Mr. Reich : I object, if the Commissioners please. The affidavit is not in evidence. There is no proof before this Commission that there is an affidavit. 40

Mr. Benny: He swore that he signed an affidavit.

By Mr. Reich:

Q. Do you know what an affidavit is?

10

Mr. Reich: May I be allowed to cross examine this witness on whether or not he knows what an affidavit is, he having answered to a legal proposition?

Chairman Kleffman: Do you know what an affidavit is?

The Witness: When I mean affidavit, I only signed my own statement, if that is the affidavit he is talking about. That is what I signed.

20

By Mr. Reich:

Q. Now, when you say affidavit, do you know what an affidavit is? A. No, sir.

Q. Was a Notary Public there? A. No, sir.

Q. Who witnessed this statement? A. The four fellows that were with me, that is all, and Mr. Clossey, I think.

30

Q. Do you know whether any of those men are Notaries, or have a right to take an oath? A. I haven't any idea whether they are or not.

Mr. Reich: I object to that, then, the question submitted previously.

Cross Examination by Mr. Benny (continued):

Q. Then I take it that you signed a statement, simply? A. Yes, one I wrote out myself.

40

Q. You wrote it out yourself and signed it? A. That is right.

Q. It was not sworn to before any Notary or officer authorized to take oaths or affidavits? A. No.

Q. Who asked you to make the statement? A. Chief Clossey.

Q. What did he say to you? 10

Mr. Reich: I object, if the Commissioners please, to what was said or how this statement was obtained. It has gone beyond any questions that I have asked on direct examination, and if this is to test the credibility of the witness I am perfectly willing to allow him to answer, but if it is going into the material points in this affidavit, or anything that he has not testified to, I certainly object. 20

Mr. Benny: Certainly it is to test the credibility of the witness.

Mr. Reich: I withdraw the objection if that is the purpose.

(Question repeated by the stenographer.)

A. He just asked me how I made out with my case, so I told him that I got out on bail all right, but it was quite tough on me, that it cost me seven hundred and fifty dollars for nothing; he had practically nothing to do. 30

Q. When was that talk with the chief? A. That was the Monday we were released from the jail.

Q. Where was the chief when you talked to him? A. In his office.

Q. Did you go back there to see him after getting out of the police station? A. Yes, sir.

Q. Why did you go back to see him? A. I had to get a release to get my car out of the garage, and he was the only man that could do it. 40

Q. Then did you sit down in the Chief's office and make out the statement? A. No, sir.

Q. Where did you make it out? A. At home.

Q. That same day or later? A. Later, much later.

10 Q. A week later or at the end of that week? A. About a week later.

Q. And then you took it over to the Chief? A. That is right.

Q. Took it over in person? A. That is right.

Q. Who else did you talk to about this matter? A. No one.

Mr. Benny: That is all.

Re-direct Examination by Mr. Reich:

20 Q. You said to him it cost you seven hundred and fifty dollars? What did you have reference to? A. Lawyer's fees.

Q. Who got the seven hundred and fifty dollars? A. The lawyer.

Q. How did he come to get it? A. How do you mean, how did he come to get it? Will you make that more plain?

30 Q. You have testified you thought it was tough, because it cost you seven hundred and fifty dollars? A. That is right.

Q. How did you come to tell him that? A. Why, just as a matter of fact, I guess, to let him know just exactly what did happen, so long as he asked.

Q. And how was the seven hundred and fifty dollars paid and to whom, and how did it come about? A. As far as I know Kirby paid the seven hundred and fifty dollars to the lawyer.

40 Mr. Benny: I object.

Mr. Reich: I withdraw that question.

Mr. Benny: Especially when it was somebody else who paid it.

Mr. Reich: I withdraw the question.

Chairman Kleffman: Proceed.

Mr. Reich: That will be all.

10

Re-cross Examination by Mr. Benny:

Q. You were charged with manslaughter, were you not? A. Yes, sir.

Mr. Reich: I object to that. Certainly he was charged with technical manslaughter.

Mr. Benny: It isn't very technical when you kill two people.

Mr. Reich: If the Commissioners please, I object to any such characterization about anybody killing anybody. Counsel knows that that statement is absolutely out of order in these proceedings.

20

Mr. Benny: Perhaps it would be better to say that there were two people killed in the accident in which these young men were driving an automobile, because counsel has shown that this young man paid seven hundred and fifty dollars.

30

Mr. Reich: You brought it out.

Mr. Benny: I am not a bit sorry to have it out. He was asked and told he paid seven hundred and fifty dollars. If he paid it on account of sugar that was a high price. If he paid it to a lawyer on account of a manslaughter charge I don't think counsel even would say it was. He would charge more himself.

Mr. Reich: I certainly would.

40

Mr. Benny: Certainly he would.

Now I am asking him—he said he paid a lawyer seven hundred and fifty dollars. Now my question is, You were charged with manslaughter?

10 The Witness: A technical charge of manslaughter.

Q. Who told you to say a technical charge of manslaughter? Because you heard your lawyer say it? A. No, it was in the newspaper.

Q. Was the charge repeated to you in court? A. Perhaps; I don't remember.

Q. Did you hear anything in court said about technical manslaughter? A. Didn't hear the term manslaughter either.

20 Q. But you knew you were charged with manslaughter, whether technical or otherwise? A. Yes.

Q. You were the driver of the car that was in collision—whether your fault or the others makes no difference—in which these two people were killed? A. That is right.

Q. And your brother and two other young men were in the car with you and were held as material witnesses? A. That is right.

30 Q. You were admitted to bail before there was any money paid to the lawyer at all, weren't you? A. No, there was security, a bank book put up.

Q. But before any money was paid you were out? A. On security of a bankbook, yes.

Mr. Benny: That is all.

(Witness excused.)

JAMES KIRBY, sworn on behalf of the complainant, testified as follows:

Direct Examination by Mr. Reich:

Q. Where do you live? A. 196 North Street, Jersey City, N. J.

10

Q. Were you a passenger in this automobile that was involved in this accident? A. No.

Q. What was the first knowledge you had of an accident in which your friends were involved? A. I was waiting for my friends to call on me. They were going to visit me that night, and I heard a crash at North Street and the Boulevard. I happened to be up at the house at the time, and I came down and found out it was my friends, so after everything was settled down they taken them down to the Boulevard police and I went along with them.

20

Q. What happened in the Boulevard Police Headquarters, as well as you remember? A. They made out statements about the accident.

Q. Were you in headquarters when these boys were transferred to the Sixth Precinct? A. No, sir.

Q. Where were you? A. I already went up home to see what I could do to get them out, because I understood the bail was going to be twenty-five hundred dollars for Madigan, and five hundred dollars apiece for the witnesses.

30

Q. Who told you that? A. Mr. Broadhurst.

Q. Did you have that much money? A. No, sir.

Q. What did you go and get your bank book for? A. I figured I could get one of them out, that was the Madigan brother; that was five hundred dollars.

40

Q. Did you bring your bank book back to headquarters? A. Yes, sir.

Q. How much money did you have in the bank account? A. \$756.

Q. What time did you get back to headquarters?
A. A little after twelve o'clock.

10 Q. Did you see Lieutenant Broadhurst there?
A. Yes, sir.

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

Q. What was your conversation with him? A. Well, I told him that I would like to bail one of those fellows out, so he says to me "What have you got to bail him out?" I said, "I have got a bank book with seven hundred dollars in it." "That is no good," he says; and he explained to me that these fellows would need a high-priced lawyer for
20 this case. So, he says, "I can get a lawyer that will take the case for you." So I told him all right. So he called up this Feinberg.

Q. He called up who? A. Feinberg.

Q. Were you there when he called up Feinberg?
A. Yes.

Q. Did he get hold of Feinberg, as far as you know? A. As far as I know he talked to Feinberg over the 'phone.

Q. Talked to Feinberg? A. Yes.

30 Q. Do you recall that part of the conversation of Lieutenant Broadhurst that night? A. Well, he explained the case over the 'phone, and Feinberg thought he couldn't come down to bail him out that night, but he would meet me in the morning.

Q. That particular part of the conversation about him not being able to come up that night, you didn't hear that? A. That is what I understood.

40 Q. Of what Lieutenant Broadhurst told you afterwards? A. Yes.

Q. What did he say? A. Feinberg couldn't come that night but he would meet me in the morning at my house to go down and bail these fellows out.

Q. Did he show up at your house? A. Yes, sir.

Q. What time of day was this? A. Sunday morning. 10

Q. What happened to the bank book? A. I gave it to Feinberg.

Q. Where did you go? A. Went down to Feinberg's office. He called up his brother, I think, a fellow by the name of Jesse, and I told him that I would be right over to his house. So he rode over to his house, and we explained the case over there to his brother, and I signed the bank book over to Mr. Feinberg.

Q. You what? A. I signed the bank book over to Mr. Feinberg as security for these fellows' bail. 20

Q. What did you get in return for giving him the bank book? A. Not a thing.

Q. What happened the next day? A. Mr. Feinberg made an appointment to meet me at 14th Street and 8th Avenue in New York City, to draw out seven hundred and fifty dollars from the bank.

Q. Did he tell you Sunday when you saw him that it was going to cost you seven hundred and fifty dollars for counsel for these boys? A. No, sir. 30

Q. What did he say? A. I signed a paper down, in his house where I was leaving that seven hundred and fifty dollars as security.

Q. Security for what? A. For bail for Madigan.

Q. Did you talk to Mr. Feinberg about retaining him to represent these boys? A. Yes, sir.

Q. Go ahead; what happened in New York on that Monday morning? A. So I went up to the teller's window and I asked the man could I have 40

seven hundred and fifty dollars, so the teller says to me, "Can't you wait until to-morrow"? He says, "By drawing the money out to-day you will break the interest." And I said, "Will you mind telling it to that fellow?"

10 Mr. Benny: We don't want any more conversations with somebody else in New York, and the boys involved were not there at all.

 Chairman Kleffman: But this has some bearing on the case.

 Mr. Benny: I object on the ground—

 Chairman Kleffman: Objection overruled.

 Mr. Benny: I haven't even stated the objection yet.

20 Chairman Kleffman: You just stated your objection.

 Mr. Benny: I am going to state the objection now. I object to the question on the ground it is incompetent, immaterial and irrelevant.

 Chairman Kleffman: Objection overruled. Go ahead.

30 A. So I spoke to the fellow, "Would you mind telling that to Mr. Feinberg?" So he told it to Mr. Feinberg, that by drawing out the seven hundred and fifty dollars I would lose the interest, so Feinberg said to me, "Well, you don't want to see them fellows go back to jail, do you?" I said "No," and I told the teller to give me the money, so he gave me the money and I got a receipt which I thought was for security, but after I read it I found out it was for a fee.

40 Q. Have you got that receipt? A. Yes, sir (producing paper).

Q. Mr. Feinberg signed this in your presence?

A. Yes, sir.

Mr. Reich: I offer in evidence at this time a writing purporting to be signed by Feinberg & Feinberg, by Jack Feinberg, reading as follows:

“Received of James Kirby the sum of seven hundred and fifty dollars, as fee in re State of New Jersey v. Thomas Madigan. Charge, Manslaughter.” Dated September 30, 1929, signed Feinberg & Feinberg, by Jack Feinberg, and move the same to be marked in evidence. 10

Mr. Benny: I object to it on the ground it is immaterial, incompetent and irrelevant.

Chairman Kleffman: I will allow it. Objection overruled. 20

Received in evidence, and marked Exhibit C-2.

Q. Did you say anything to Mr. Feinberg that this seven hundred and fifty dollars was to be a collateral deposit, and not in payment of fees?

Mr. Benny: I object to that on the ground that the question is leading, immaterial, incompetent and irrelevant. 30

Mr. Reich: I withdraw the question in that form.

Q. Going back to the time that this bank book was left at Mr. Feinberg's house, who had the bank book to give to Mr. Feinberg?

Mr. Benny: I object to that question on the ground that it is incompetent, immaterial and irrelevant. 40

10 Mr. Reich: If the Commissioners please, to save time, I think a general objection might be noted to all these questions in which Lieutenant Broadhurst is not concerned. I appreciate that this case is unique in the fact that we could not get three men together on all these facts, and one thing leads to another, but the fact remains that the connection was brought about not through any questioning on my part, but the amount of the fee and who it was paid to and how it came about was brought out by Mr. Benny himself. I couldn't bring it out. It was impossible for me in my direct case to bring it out. He brought it out, and I will have to go into it and find out what the seven hundred and fifty dollars is about.

20 Chairman Kleffman: I believe there should be no objection to asking the question. We want to be fair with everybody here, and we don't want to sit here all night.

Mr. Benny: May I call your attention to the rules of the department?

Chairman Kleffman: You may.

30 Mr. Benny: And then I think you will appreciate that my objections are well founded.

On page 9, at the bottom of the page: "No complaint should be preferred against a member of the department unless there is good reason to believe that an offense, within the meaning of this rule, has been committed by the accused, and that it can be proved by competent evidence."

40 Now I am going to try to keep out of this case incompetent evidence, whether counsel on the other side wants to put it in or not,

and that evidence, if it is incompetent, I am going to try and keep it out if I can. If you let it in over my head all right, but it must be competent evidence, the same as if it was before one of the judges here in some case.

Chairman Kleffman: Repeat the question.

Q. (Repeated by stenographer.)

10

Mr. Reich: I withdraw the question.

Q. Kirby, were you in the 7th Precinct Headquarters with Lieutenant Broadhurst at the time that the boys were in the 7th Precinct? A. Yes, sir.

Q. How did he get to the 7th Precinct Headquarters? A. He rode over on his motorcycle.

Q. You rode on his motorcycle? A. We rode over on his motorcycle.

20

Q. And what was the purpose of you going there? A. Well, after we found out that Mr. Feinberg couldn't get them out he told us the best thing to do was to go over and tell them fellows that they would have to stay there over night, so he offered to take us over on his motorcycle.

Q. Do you know Mr. Feinberg? A. Absolutely.

Q. Did you know him before September 28th? A. No, sir.

30

Q. Did you ever hear of Mr. Feinberg before? A. No, sir.

Q. Who told you about Mr. Feinberg? A. He was recommended to us by Broadhurst.

Q. Was any conversation had in your presence by Lieutenant Broadhurst with Mr. Feinberg? A. No, sir.

Q. Were any arrangements made by Lieutenant Broadhurst and Mr. Feinberg over the telephone?

40

A. Arrangements were made for Mr. Feinberg to meet me at my house on Sunday morning. That is all the arrangements made over the 'phone.

Q. And did Mr. Feinberg meet you? A. Yes, sir.

10 Q. And what did Mr. Feinberg say to you relative to the arrangements that had been made by Lieutenant Broadhurst? A. Well, he told me on the way down, he says that he was taking a chance on bailing these fellows out, saying that they came from out of the state, and he told me that if anybody ever mentioned to me how we came to get in contact with him that we had been old friends, that we had done business before.

Mr. Reich: Take the witness, Mr. Benny.

20 Cross Examination by Mr. Benny:

Q. Feinberg said to you to tell anybody that asked you that you and he were old friends? A. Yes, sir.

Q. What was the amount of the bail? A. Four thousand dollars, I believe it was something like that.

Q. You were held in twenty-five hundred dollars? A. I was not held at all.

30 Q. No, I mean Thomas Madigan was held in twenty-five hundred dollars bail? A. Yes, sir.

Q. And the three witnesses in five hundred dollars bail apiece? A. Yes, sir.

Q. There were in all four witnesses? A. Three.

Q. That would make four thousand dollars, wouldn't it? A. Yes, sir.

Q. Did Mr. Feinberg put that bail up on Sunday? A. Yes, sir.

40 Q. And got you all out on Sunday morning? A. Got them all out on Sunday morning.

Q. Your friends, yes, I mean? A. Yes.

Q. Were you with them when they were taken out? A. Yes.

Q. Did you meet Feinberg on Monday? A. Yes, sir.

Q. In New York? A. Yes, sir.

Q. And paid him the money? A. Yes, sir. 10

Q. Now you went down to Boulevard Police Headquarters pretty soon after the accident, did you? A. I went down with them as they were taken down. When they were arrested I went down with them. I rodé down with them.

Q. At the time of the accident? A. Yes.

Q. How long did you stay at Headquarters before you went home? A. I should say about an hour or an hour and a half.

Q. Then did you go back to headquarters before the fourteen were taken away to the Sixth Precinct? A. When I got back there they were gone. 20

Q. When you got back there they were gone? A. Yes, sir.

Q. About what time was it when you got to Police Headquarters after they had been taken away? A. A little after twelve o'clock.

Q. A little after twelve on Saturday night or Sunday morning? A. Yes. 30

Q. When you asked how much the bail would be at headquarters when Lieutenant Broadhurst was there, did you see Chief Clossey there? A. Chief Clossey wasn't there.

Q. And wasn't Chief Clossey there when Broadhurst told you that those cases, that generally they were held in bail at twenty-five hundred dollars? A. I didn't see Chief Clossey down there.

Q. Was there anybody there besides Broadhurst? A. A couple of officers. 40

Q. And Lieutenant Broadhurst told you that in those cases the court generally asked twenty-five hundred dollars bail for the driver in a manslaughter charge, didn't he? A. Yes.

10 Q. And did he tell you that the witnesses would probably have to give five hundred dollars bail each? A. Yes, sir.

Q. You had asked him about that, hadn't you, about how much the bail would be? A. Yes, sir.

Q. You hadn't had any talk with anybody about bail until after you came back from home? A. That is when I had the talk with him.

Q. After you came back from home? A. Yes, after I came back from home.

20 Q. You went back home after you had been around the station for about an hour—police headquarters, I mean? A. Yes, sir.

Q. And you went home to get your bank book, but you hadn't had any talk with anybody up to that time about bail, had you? A. No, sir.

Q. You just went home thinking that the bank book would help to get one of the boys out, as you said, on five hundred dollars bail? A. Yes, sir.

Q. Didn't you say to Lieutenant Broadhurst, and isn't it a fact that you were anxious to get Thomas Madigan's brother out? A. Yes, sir.

30 Q. Didn't you say to Lieutenant Broadhurst that the Madigan boys' mother was an old lady at home and she would be worrying about them, and you wanted to get the brother out so he could go home and tell the mother that his brother Tom was going to stay out with you all night? A. Yes, sir.

Q. So that you wanted to hide the fact from the mother that they were in this accident? A. Yes, sir.

40 Q. And you were very much excited about the accident? A. Yes, sir.

Q. And it had happened quite a short distance from your home where these boys were about to visit? A. Yes, sir.

Q. And when you went down to Police Headquarters you were nervous and excited? A. Yes, sir.

Q. And feeling very badly because your friends had gotten into that trouble, is that right? A. That is right. 10

Q. So, of your own accord you thought the bank book would help you to get one boy out who could go home and tell the mother about the other boy? A. That is right.

Q. Then you came back to Police Headquarters with the bank book in your possession? A. Yes.

Q. How long had you been in the police station after coming back with the bank book before you talked with Lieutenant Broadhurst about getting the boys out? A. About three quarters of an hour. 20

Q. Waited around there three-quarters of an hour? A. (No answer.)

Q. Did you talk to anybody except Lieutenant Broadhurst about how to get the boys out? A. That is all.

Q. Then you went over to Lieutenant Broadhurst and told him you were a stranger in the neighborhood? A. Yes, sir. 30

Q. And that you didn't know anybody? A. Yes.

Q. And asked him if he couldn't help you to get this brother of Tom Madigan's out, didn't you, on bail? A. Yes.

Q. And you yourself was worrying because you thought these boys' mother would be worrying at home when she didn't hear from them? A. Yes, sir.

Q. And you wanted somebody to give them assistance so as to get at least one of those boys out? A. Yes, sir. 40

Q. So you approached Lieutenant Broadhurst and told him you were a stranger in the neighborhood? A. Yes.

Q. That you had only lived there a little while? A. Yes.

10 Q. And you told him you didn't know anybody, and you wanted to know what you could do to get one of these boys out? A. Yes, sir.

Q. Did you suggest a lawyer, that a lawyer could help? A. No.

Q. Didn't you say to the Lieutenant that you didn't know any lawyer around in the neighborhood to help you, and you wished he would give you a little assistance to get one of the boys out? A. Yes, sir.

20 Q. To go home and tell the poor old mother about the boys staying over here all night? A. Yes, sir.

Q. What did you say to that? A. Yes, sir.

Q. Where were you with relation to Lieutenant Broadhurst when he called on the telephone to Jack Feinberg? A. In the office.

Q. There are two rooms there, are there not? Front office and back office? A. In the front office.

Q. In the front room where the Sergeant is at the desk? A. Yes.

Q. You were in that room? A. Yes.

30 Q. Where was the telephone with relation to the Sergeant on the desk? A. Right on the desk.

Q. And the Lieutenant sitting in the chair? A. The Lieutenant sitting in the chair.

Q. The desk lieutenant? A. The desk Lieutenant.

Q. And Lieutenant Broadhurst out on the floor? A. Out on the floor.

Q. Anybody else there? A. Not that I remember.

Q. And did you see Chief Clossey there at all? A. No, sir.

Q. Not at any time? A. Well, I seen him there after the accident happened. He came in and looked at the boys, that is all, and I seen him walk out again.

Q. Did you hear everything that Lieutenant Broadhurst said on the telephone? A. Yes, sir.

Q. Were you as close to him as the lieutenant at the desk? A. Yes, sir. 10

Q. Each of you about the same distance from him? A. From you to me.

Q. And he talked right out loud? A. Yes, sir.

Q. How many times did you hear him or see him call up on the telephone? A. Once.

Q. Didn't he call more than once? A. No, sir.

Q. Didn't he call a Delaware number? A. I don't remember; I don't think he did, anyway.

Q. What? A. I don't think he did, anyway. 20

Q. Why do you say you don't think he did? Were you away from the place? A. I was standing right alongside of him when he was called.

Q. Never went outside of the room? A. No.

Q. Isn't it a fact that you were in the rear room when Mr. Feinberg got on the wire, and Lieutenant Broadhurst called you to the telephone? A. No, sir.

Q. And didn't you say to him that you were too nervous; that you couldn't talk, and for him to talk for you? A. I was standing right alongside of him when I said I would like him to make the date for me. 30

Q. Did you say you were too nervous to talk on the phone, and for him to talk? A. I didn't say it.

Q. Well, were you too nervous? A. No, I wasn't nervous about it.

Q. You were pretty nervous and excited, weren't you? A. That all wore off when I found out what it was about. 40

Q. Didn't Lieutenant Broadhurst tell you to take the phone and talk to Broadhurst? A. Yes.

Q. And you didn't do it? A. I told him to straighten up matters.

Q. And did you tell him to take it and make the date for you in the morning? A. Yes.

10 Q. You didn't hear Lieutenant Broadhurst call up a couple of other numbers? A. No, sir.

Q. Didn't you hear him call North Bergen, a North Bergen number? A. No, sir.

Q. Or a Delaware number? A. No, sir.

Q. You swear you didn't hear him? A. No.

Q. Will you swear he didn't do it, or that you didn't hear him? A. No, I didn't hear him.

Q. Did you hear him call up the Sixth Precinct or the Seventh Precinct? A. I think he called up
20 the Sixth Precinct.

Q. Are you sure? You are not sure, are you?
A. (No answer.)

Q. A few minutes ago you were sure he only called once. A. (No answer.)

Q. Didn't you ask him to call up the Sixth Precinct and to tell the man at the desk that you had a man with his bankbook to put up if he would let this boy out? A. That is right.

Q. Then you heard him call the Sixth Precinct?
30 A. That is right.

Q. Then you were mistaken before when you said he only called once? A. Yes, sir. I did not know what them telephone numbers you are talking about. You are talking about Delaware and North Bergen.

Q. I asked you if he called more than once, and you said no, he only called one time. Now you say he called twice. Will you say he didn't call three or four times? A. No, sir.

40 Q. You won't say that? A. No, sir.

Q. He might have called three or four times? A. He might have for all I know. I wasn't interested in what he was calling up. I was interested about these fellows:

Q. Getting them out? A. That is right.

Q. And you weren't paying much attention about him calling up? A. No, but I remember him calling 10
Feinberg. I can't forget that.

Q. He is the man that got you out—got your friends out? A. Yes.

Q. You read English all right, don't you? A. Pretty good.

Q. You say you got a receipt from Mr. Feinberg on Monday? A. Yes, sir.

Q. At the bank in New York? A. Yes, sir.

Q. And you are sure it was written at the bank in New York? A. Yes, sir. 20

Q. Right there? A. Yes, sir.

Q. And you took it home with you? A. Yes, sir.

Q. And you read it? A. Well, I didn't get a chance to read it, to tell the truth.

Q. Why? A. As soon as she gave it to me he beat it out. That is all I seen of him.

Q. You had the receipt? A. Yes, after he was gone. That didn't do me any good.

Q. Did you read it? A. Yes.

Q. Did you say anything to him about it? A. I 30
didn't get a chance. I haven't seen him since.

Q. You know where his office is? A. Yes.

Q. And how to telephone him? A. Yes.

Q. Did you call him? A. Madigan called him up.

Q. Did you ever say anything to Mr. Feinberg about a receipt reading for fees instead of being for security? A. No, sir.

Q. Did you ever phone him to that effect? A. No. 40

Q. Did you ever write him? A. No, sir.

10 Commissioner Kleffman: Has this any bearing on this case at all? The receipt reads, for fees, and that is all it can count for it. Now why waste the Commissioners' time if it is nothing that makes any difference in the case?

Mr. Benny: I tried to keep the receipt out and you let it in over my protest. It has no business here.

Mr. Reich: We will see whether it has or not.

The Witness: Can I ask a question now?

Mr. Reich: No, never mind.

20 Re-direct Examination by Mr. Reich:

Q. Who was given seven hundred and fifty dollars for which this receipt was given by Mr. Feinberg? Who was given the money? A. Mr. Feinberg.

Q. Did you handle it at all? A. Just took it from the teller and gave it to Mr. Feinberg.

Q. Then what did Mr. Feinberg do? A. He thanked me for it and beat it.

30

Mr. Reich: That is all.

(Witness excused.)

EDWARD J. CONNORS, sworn:

Direct Examination by Mr. Reich:

40 Q. Where do you live? A. 4823 Forty-seventh Street, Woodside, Long Island.

Q. Mr. Connors, you were a passenger in this automobile on the 28th day of September? A. Yes, sir.

Q. And you were one of the four men who were taken down to the Boulevard Headquarters, were you? A. Yes, sir.

Q. Just tell us what happened? A. Well, I 10
don't know. It was along about 9:15 when this accident occurred, and we were taken immediately down. Of course after the officers had our names and addresses, and so on, and we voluntarily gave statements to the best of our knowledge of exactly what happened, and they told us that we needed counsel, not no high-priced lawyer, some one that would put his hat on and go out and work for us.

Q. Who told you that? A. I believe it was Mr. Broadhurst. And Mr. Kirby was there and they 20
later put us in a room somewhere back of the office and Mr. Clossey came in and seen us and went out, and I didn't see Mr. Kirby again, or hear anything further until he came in about 12:30 or 1 o'clock when we were in the 7th Precinct, or 6th Precinct.

Q. Who accompanied him to the 7th Precinct? A. I don't know. He and this McGill, this fellow that was with him. I didn't see the Lieutenant.

Q. You were in a separate cell, weren't you? A. Yes, sir. 30

Q. Did you get coffee that night? A. Yes, I did.

Q. Did you talk to Kirby that night? A. I did. I asked him if he had counsel, and he said no, he hadn't been able to get any, but he thought he would be able to get it the following day.

Cross Examination by Mr. Benny:

Q. Were you held in bail? A. Yes, sir.

Q. You were one of the four held in bail? A. Yes, sir. 40

Q. Who took your statement? A. Lieutenant Broadhurst.

Q. Who was in the room besides Lieutenant Broadhurst and yourself when the statements were taken? A. There was another man in civilian clothes, addressed as a lieutenant, I believe, and officers coming in and out.

10

Q. You all four were there? A. Yes, sir.

Q. Thomas Madigan and his brother? A. Yes.

Q. And you and the other man? A. Yes, and Mr. Kirby.

Q. All in there together? A. Yes, sir.

Q. Where were you when Kirby went over to the 7th Precinct Police Station late at night about one o'clock? A. I get the precincts mixed up. I was along with the others.

20

Q. Kirby had a coat belonging to one of you? A. Yes, my coat.

Q. And he took it over there and returned it to you? A. Yes.

Q. Did he say anything to you when he took the coat and handed it to you? A. Not that I remember.

Q. Just handed you the coat? A. He gave me some coffee.

30

Q. What is that? A. He gave me some coffee, I think.

Q. He had been in there to see you first? A. No.

Q. Wasn't he in the place first and then went out to get coffee? A. I don't know, he might have.

Q. Didn't he go in to see you first? A. I don't remember whether the two came in together or singly.

Q. Do you remember his going out after he got over where you were and coming back again? A. No, I don't remember.

40

Q. Were there any other police officers present in the room where your statement was taken at Headquarters besides Lieutenant Broadhurst, and a man in civilian clothes, whom they addressed as Lieutenant? A. That is all, and officers coming to and fro.

Q. Were those two men there all the time? A. 10
Yes.

Q. When the statements were taken? A. Yes, sir.

Q. And were you all sitting close together? A. No, two taking statements were sitting at the desk and two standing over against the wall.

Q. Were you sitting at the desk when your statement was taken? A. Yes, sir.

Q. Where were your three colleagues, the men with you? A. Standing over against the wall. 20

Q. And you were sitting at the table along with Lieutenant Broadhurst? A. And the other man. There were two statements taken at a time.

Q. Was the man in civilian clothes whom they addressed as lieutenant, taking any statements? A. Yes.

Q. Did you hear him called Lieutenant Kelty? A. I think that is the name.

Q. And the others were over against the wall? A. That is correct. 30

Q. How far were those men against the wall from where you sat? A. It is hard to say. It was rather a small room, and it might have been the distance of six feet or so.

Q. Six or seven feet? A. Yes, sir.

Q. Did Lieutenant Broadhurst announce in an ordinary tone of voice that could be heard in all parts of the room that you needed a high-priced lawyer? A. No, he didn't say it then. He came in and said we wouldn't need a high-priced counsel, 40

we needed a man who would go out and go to work for us.

Q. Oh, you did not need a high-priced lawyer?

A. That was what he told us.

Q. What was that in answer to, if anything? A. Nothing. Just a bald statement.

10 Q. He just came in the room? A. Yes, sir.

Q. And who was there then? A. The four of us, and I believe a detective.

Q. Not this man, the Lieutenant, in citizen's clothes, the lieutenant? A. No.

Q. A detective? A. I believe he was.

Q. Was his name Hayes? Did you hear him called Hayes? A. I don't know what his name was.

Q. You didn't hear him called anything? A. 20 No, sir.

Q. And without any notice at all Lieutenant Broadhurst came in and announced you did not need a high-priced lawyer, but you needed somebody to take his coat off and go to work for you? A. There was a remark preceding that about the payment of bail. We were held in bail and he said we would need counsel.

Q. Who made the remark about bail? A. The lieutenant.

30 Q. Lieutenant Broadhurst? A. Lieutenant Broadhurst, yes, sir.

Q. He volunteered the statement that you needed bail? A. Yes, sir.

Q. Was this before Mr. Kirby had seen him about getting you out of bail? A. I believe Mr. Kirby was gone. At least he was in the other room and had left, and I had given him my coat.

Q. Did you talk to the friends about that afterwards, after he left there or at any time since? A.

40 No, I did not.

Q. Nothing said there at all that night except just what you have told us? A. That is all.

Q. Did Lieutenant Broadhurst make the observation about the bail when the other lieutenant in civilian clothes was present, or when he was not present? A. No, I don't believe he was in the room, just the detective and the four that were detained. 10

Q. And Lieutenant Broadhurst? A. Yes.

Q. And without anybody saying anything Lieutenant Broadhurst came in and said you would need bail? A. He said something about—Thomas was held in Twenty-five hundred Dollars bail and the other three in Five hundred Dollars each, and he said we couldn't go into a high court without counsel.

Q. Did Madigan or any of you ask him about bail? A. Not that I know of. 20

Q. Did you ask him about bail? A. No, I did not.

Q. Did you hear anybody else ask him about bail? A. No, sir.

Mr. Reich: That same question has been asked four times and he answered no.

Q. Now I want you to tell me, because it is important, exactly what was said about bail, and what was said about a lawyer by Lieutenant Broadhurst? A. Well, just as I stated before, that there was twenty-five hundred dollars for Thomas Madigan, and five hundred dollars apiece for us. 30

Q. That isn't answering my question. I want you to tell me what Lieutenant Broadhurst said. Give me his words to you. A. They weren't addressed to me; they were addressed to the people in the room. 40

Q. What people? A. The four that were held and the detective.

Q. Then what were the words that Lieutenant Broadhurst said? A. He looked us over and pointed to Thomas Madigan, and he said, "You are held in twenty-five hundred dollars bail, and the others in
10 five hundred dollars each," and then followed the remark about needing counsel.

Q. And he said to Thomas Madigan, "You are held in twenty-five hundred dollars bail, and the others in five hundred dollars each? A. Yes.

Q. Did he tell you who held you in that bail? A. No. It was just sort of information.

Q. And a detective was there at the time? A. I believe so.

20 Mr. Benny: That is all.

(Witnessed excused.)

JAMES DULLIGAN, called as a witness on behalf of the complainant, after being duly sworn, testified as follows:

30 Direct Examination by Mr. Reich:

Q. Where do you live? A. 980 Grand Street, Bronx.

Q. Mr. Dulligan, you were one of the four boys who were riding in the car that night? A. Yes, sir.

Q. And you were in headquarters at the time all these other boys were there? A. Yes, sir.

Q. You are acquainted with Lieutenant Broadhurst, having seen him that night? A. Yes, sir, I
40 did; he took my statement.

Q. He took your statement? A. Yes, sir.

Q. Just describe to us as well as you are able, what happened in the room that night? A. Well, I was just sitting around smoking, and Lieutenant Broadhurst called me and he said, "Have I had your statement yet?" and I said, "No." He said, sit over here, and describe as best I could the accident, and then after my statement we stood around and smoked, and later we were asked to go in this room and we sat there. 10

Q. Who was in the room where you sat? A. Madigan and Connors. Both Madigans and myself and a detective there. We were talking to him.

Q. And Lieutenant Broadhurst, did he see you in that room? A. Yes, sir, he did come in.

Q. What were you waiting for? A. I don't know.

Q. Were your statements all taken? A. Yes, sir, 20 everything was taken.

Q. Were you booked? They took your names and addresses and everything else? A. I believe he did in the statement; he got everything.

Q. And how long did you wait in that room? A. Before we left the police station?

Q. Yes, before you left? A. About three-quarters of an hour.

Q. What were you waiting three-quarters of an hour for, do you know? A. I have no idea. 30

Q. Was there anything done when the three-quarters of an hour expired that should have kept you there? A. Nothing only taken out of there.

Mr. Benny: I object.

Q. If he knows.

Mr. Benny: How could he know why the police kept them?

Mr. Reich: I am asking him if anything happened after the expiration of three-quarters of an hour that would give him any idea why they were kept there. The answer is yes or no.

Mr. Benny: I withdraw the objection.

10 Q. So when the three-quarters of an hour expired you left there. Where did you go? A. From there we went to the—I don't know whether it is the Sixth or Seventh Precinct.

Q. You went to a police station? A. Yes.

Q. Did you stay at the next police precinct? A. Our names were taken.

Q. How long did you stay there? A. No more than fifteen minutes.

20 Q. And from there you went to where? A. To another police station.

Q. And it was at this latter police precinct that you stayed over night, is that right? A. Yes, sir.

Q. And did you see Kirby when you were in the latter place? A. Yes, sir.

Q. Did you see Lieutenant Broadhurst there? A. No, sir.

30 Q. Was there any talk or any conversation had between any of the four men or Kirby and Lieutenant Broadhurst relative to any bail or getting any counsel, or anything along those lines?

Mr. Benny: If the Commissioners please, I think that counsel shouldn't do that. Let this witness tell what he heard and saw. Don't suggest all these things to him. He has almost told the story.

Mr. Reich: I withdraw the question.

40 Q. Mr. Dulligan, what was said while you were there at the Boulevard Police Headquarters? A. At the Boulevard?

Q. Yes. A. In respect to bail?

Q. Yes. A. Nothing.

Q. Did you hear anything said about bail? A. In the room I did.

Q. In what room? A. In the small room.

Q. That is after your statement had been taken?

A. Yes, sir.

10

Q. And you were in this small room when the remark was passed about bail? A. Yes, sir.

Q. Who said anything about bail? A. Lieutenant Broadhurst.

Q. What did he say? A. Well, it went on as Thomas Madigan, the driver, was held in twenty-five hundred dollars, and we were held as material witnesses—

Q. And that is all that was said about anything?

A. That is all that I heard. When I had heard we had to stay over night that is all I wanted to know.

20

Q. You were satisfied? A. That was the most important thing.

Cross Examination by Mr. Benny:

Q. Did you hear Lieutenant Broadhurst say that the judge generally fixed twenty-five hundred dollars for the driver in a manslaughter case? A. Yes, sir.

30

Q. And five hundred dollars for the witnesses? A. Yes, sir.

Q. And that is all he said? A. That is all I heard. When I heard that I thought I was being held.

Q. You didn't have the five hundred dollars with you, and you thought you were in for the night? A. Exactly.

Mr. Benny: That is all.

(Witness excused.)

40

WILLIAM MADIGAN, called as a witness on behalf of the complainant, after being sworn testified as follows:

Direct Examination by Mr. Reich:

10 Q. Where do you live? A. 2240 Thirty-fifth Street, Long Island City, New York—Astoria.

Q. You are a brother of Thomas Madigan, the boy that drove the car? A. Yes, sir.

Q. The four of you were together that night from the time of your arrest until your release, were you? A. Yes, sir.

20 Q. Your brother testified that after the statements had been taken in police headquarters, the Boulevard Police Headquarters, where you were originally taken, you were seated in a room there for a period of about three-quarters of an hour. Do you recall that? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Did anything happen after the expiration of that time? A. Only we went to another police precinct and were booked there, and then we went to the next precinct where we stayed over night.

30 Q. Did Lieutenant Broadhurst in your hearing say to you or to any one of the four of you anything relative to—

Mr. Benny: One moment. I object to counsel suggesting the answer.

Mr. Reich: I withdraw the question.

40 Q. What did Lieutenant Broadhurst say in the room to you or to any one of the three men in your hearing? A. He told us that we would have to go to court and be held in bail, my brother in twenty-five hundred dollars, and the material witnesses in five hundred dollars each, and he suggested getting a lawyer, and he suggested—

Q. As near as you can recollect what was the remark made as to the suggestion? A. He said that he would get us a lawyer that would go out and fight for us.

Q. He would get you a lawyer that would go out and fight? A. Yes. He said we shouldn't pay for a high-priced lawyer.

10

Q. He said you shouldn't pay for a high-priced lawyer? A. Yes, he did.

Cross Examination by Mr. Benny:

Q. Where were you when you heard him say that? A. I was in the Boulevard police.

Q. Standing up or sitting down? A. Sitting down.

Q. Sitting at the table? A. No, we were in the back room.

20

Q. You were in the back room sitting down? A. Yes, sir.

Q. The statement had been taken then? A. Yes, sir.

Q. And who was in the room besides you four? A. This man who was a detective I judged him to be.

Q. A man in civilian clothes? A. Yes, sir.

Q. Did you hear his name? A. No, sir.

30

Q. And Lieutenant Broadhurst was there? A. Lieutenant Broadhurst came in and told us.

Q. You were very much interested in getting out that night? A. Yes, sir.

Q. Did you make any inquiry about getting out, or what the bail would be? A. No, we left that to Mr. Kirby because he said he was going home and get his bankbook to try and get me released.

Q. So you could go home and tell your mother? A. We were told that New York property was not good as security bail.

40

Q. Who told you that? A. Mr. Broadhurst, that deeds in New York were not legal.

Q. How did that come up? Did you ask him about New York property? A. Yes, sir.

Q. Did you ask him anything else about getting bail? A. Yes.

10 Q. You wanted to get out and asked him how you could get out? A. Yes, surely.

Q. And you asked what the bail would be? A. Yes.

Q. And he said that they generally fixed twenty-five hundred dollars for the driver and five hundred dollars for the witnesses? A. Exactly.

Q. Now when Kirby went over to see you at the Seventh Precinct station house he returned a coat to one of you? A. To Mr. Connors, yes.

20 Q. Did he tell you then that he had been trying to get you out on bail? A. Yes, he told us.

Q. Wait a minute.

Mr. Reich: Counsel has asked for an answer and he is getting it, and I think that the answer should go in in full.

Mr. Benny: When I get an answer that is all I want. He answered my question.

Chairman Kleffman: Go ahead.

30 Q. Did you see Chief Clossey there that night at headquarters? A. Yes. He came in and looked around and went out again.

Q. Did you ask him anything about bail? A. No, sir.

Q. Did you ask anybody else except Lieutenant Broadhurst about bail? A. No.

40 Q. When Mr. Kirby visited you over there and returned a coat to one of the four did he tell you that he had been trying to get bail? A. Yes, sir.

Q. Did he tell you that he went home and got his bank book? A. Yes, sir.

Q. And that they wouldn't take the bank book as security? A. He told us that Mr. Broadhurst got him a lawyer.

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

Q. Did he tell you that they wouldn't take his 10
bank book? A. I cannot say.

Q. Who heard the conversation between you and the other members, the other four and Mr. Kirby at the Seventh Precinct station house while Mr. Kirby was telling you about his efforts to get bail? A. Mr. Broadhurst.

Q. Anybody else? A. The keeper, but I think he walked away while Mr. Broadhurst was there.

Q. Was Mr. Broadhurst there all the time you were talking together? A. Yes, my brother and I. 20
I don't think the other two gentlemen came down.

Q. What other two? A. The other two witnesses.

Q. Oh, you and your brother were alone? A. They weren't there when he brought the coffee and the toast.

Q. The other two were— A. The other two were in a cell and we went out and spoke to Mr. Broadhurst, and Mr. Kirby was at the gate.

Q. Who was with Mr. Broadhurst? A. Mr. Kirby and Mr. McGill. 30

Q. And Mr. McGill is Kirby's friend.

Q. Wasn't the keeper of the prison there? A. I don't know if he stood there or not.

Q. But you noticed the others? A. Yes.

Q. Why didn't you notice the keeper? A. I wasn't interested in him.

Q. You just noticed the people you were interested in? A. Yes, sir.

Q. And nobody else? A. Yes, sir.

Q. Were there a lot of people there? A. No, sir. 40

Q. How do you know that? A. Because there was nobody else in the jail.

Q. You looked around? A. Yes.

Q. And saw the keeper and Lieutenant Broadhurst? A. Yes.

Q. And these other people? A. Yes.

10 Q. Did Lieutenant Broadhurst and the keeper stay a long time or did they go away? A. To the best of my knowledge the keeper walked away and Lieutenant Broadhurst stayed there.

Q. A long time or just a minute? A. Five or six minutes.

Q. Broadhurst stayed there all alone five minutes? A. With Mr. McGill. I asked the keeper if we all got in one cell. We asked Lieutenant Broadhurst if we could all get in one cell, and he asked the keeper.

20 Q. And the keeper was there with him at the time? A. I am getting ahead of my story.

Q. I want you to answer the question.

Mr. Reich: I object to any argument.

Mr. Benny: I want my questions answered.

Mr. Reich: Because the answers do not satisfy counsel.

30 Chairman Kleffman: Let him proceed, and if it doesn't suit the Commissioners we will stop it.

Q. Lieutenant Broadhurst stood there for about five minutes? A. Yes, sir.

Q. And the keeper walked away? A. Yes, sir.

Q. Where did he go? A. I don't know; I haven't the slightest idea.

Q. Did he go out of sight? A. Yes, sir.

40 Q. Come back after a while? A. No, sir, not that I know of.

Q. And did you have any conversation at all with Broadhurst in the presence of the keeper? A. Only I asked him could we all be put in the same cell.

Q. And the keeper told you no? A. Yes; and the keeper walked away.

Q. Did Kirby tell you that he got a lawyer? A. 10
Yes, sir.

Q. And that the lawyer would be down in the morning to get you out? A. Yes, sir.

Q. And you were glad to get that news? A. Surely was.

Mr. Benny: That is all.

(Witness excused.)

20

WILLIAM F. CLOSSEY, called as a witness for the complainant, being duly sworn, testified as follows:

Direct Examination by Mr. Reich:

Q. You are the Chief of the Boulevard Police Department? A. Yes.

Q. Do you recall the night of Saturday, September 28th? A. Yes, very well. 30

Q. You are familiar with the fact that there was a serious accident on that particular night? A. Yes.

Q. Do you recall who was on duty at headquarters on that particular night? A. Doing desk duty? I don't know who was on the desk that night.

Q. Would it refresh your recollection to see the docket on that particular day? A. Oh, yes, very much so. 40

Mr. Benny: We will admit anybody you want to was on that night.

Mr. Reich: Very well, Lieutenant Hanley was on the desk.

10 The Witness: Yes, Lieutenant Hanley was on the desk that night; I remember it now.

Q. And Lieutenant Broadhurst was also on that tour? A. He was on that tour.

20 Q. What are police rules relative to the booking of prisoners at the Boulevard Police Headquarters where there has been an accident such as the one in question where two people are killed? A. Well, there are first statements taken from all people connected with the accident, all the witnesses, and whoever knew anything about the accident the officer is supposed to bring him down to headquarters, and statements taken of each and every person, and then the statements are filed away. Anybody being booked they call a patrol wagon and they are borne off to whichever precinct the accident happened in.

Q. Who fixes bail in these cases? A. The precinct to which they are brought, the Lieutenant at the desk.

30 Q. Did you ever fix bail in the Boulevard police headquarters? A. No, we have no authority to book anybody in another police department.

40 Q. Were you at police headquarters this particular night this accident happened? A. I came in there just before they finished taking all the statements, and I waited there until all the statements were taken, which was about ten or fifteen minutes after eleven. I seen all the boys there, and they were brought in, and a drunken driver brought in at the same time, and the doctor cleared that up, and I left there, and I figured that they would be

brought over and booked at that time—it couldn't have been any later than half-past eleven, and they should have been out of there by half-past eleven—and my wife was downstairs waiting for me, and I went home with her after everything was cleared up about half-past eleven.

10

Cross Examination by Mr. Benny:

Q. You say they should have been out at half-past-eleven? A. Yes.

Q. It would make a big difference whether they could get a patrol wagon, Chief? A. Patrol wagons are always very handy.

Q. Did you know the Lieutenant at the desk that night called up the Sixth Precinct twice for a patrol wagon and could not get one, and had to wait quite a while for it? A. I did not know that.

20

Q. That was Patrolman Kelty? A. I did not know that.

Q. Is Patrolman Kelsey here? A. I don't know. He ought to be here. He was subpoenaed to be here.

Q. You don't have any patrol wagons around headquarters there, do you? A. No.

Q. And you have to get them from the precincts? A. Yes.

30

Q. And the proper place to get it that night would be from the Sixth Precinct police station? A. Right.

Q. You made the charge here, Chief, against the Lieutenant? A. Yes.

Q. I show you the document with your signature on it? A. Right.

Mr. Benny: I ask that this be marked for identification.

Marked Exhibit D-1 for identification.

40

Q. What time did you say you left headquarters that night, Chief? A. About a quarter after eleven.

10 Q. Did you make any inquiries before you went out as to whether they had phoned for a patrol wagon? A. I made inquiries that the case was all cleared up, and that they had statements from everybody, and I was satisfied everything was cleared up and statements all made, and as I said before, the drunken driver was cleared up, and I didn't see any reason for me standing around any longer, and I went home.

Q. Did you see the four men sitting around the room? A. Yes, I saw the four men sitting around the room, and I went and looked at them.

20 Q. Did you say anything to anybody about why don't you get them out of here? A. No, I didn't, because I thought that was understood. The lieutenant on the desk made a statement on the subpoena that he was sick in bed and can't be here, Lieutenant Hanley, who was on duty that night, but his statement reads—

Q. Have you a statement from him? A. Yes, sir.

Q. Have you got it here? A. Yes.

Q. Do you mind letting me see that statement?
A. It is up to the counsel.

30

Mr. Benny: I was speaking to the counsel at that time. Excuse me.

(Mr. Reich produces statement.)

Q. You read Lieutenant Hanley's statement, did you? A. Yes, when he made it out.

Q. Is the statement all right, to your satisfaction? A. I don't suppose it has been changed any, counsel.

40 Q. It is in your possession? A. I don't think the counsellor would change it any.

Q. No, you misunderstand me. Is the statement all right to you as Chief of Police? A. It is satisfactory as far as he was concerned.

Q. Lieutenant Hanley was in charge that night? A. Yes.

Q. The man who made the statement? A. Yes.

10

Mr. Benny: I ask that the statement be marked for identification.

Marked D-2 for identification.

Q. And you have no reason to believe that Lieutenant Hanley didn't get those men off to the Seventh Precinct Police Station as quickly as he was able to in the line of his duty? A. I think he made a mistake that he didn't get them off at the time I left. There was nothing else to be done. The boys were all through.

20

Q. Could he get them off without the patrol wagon? A. I didn't suppose there was any difficulty about getting a patrol wagon. There never was before.

Q. You didn't ask, did you? A. No, I didn't.

Q. When did you first think that these men should have been gotten away from headquarters earlier than they were? A. The following Monday morning.

30

Q. The following Monday? A. Yes.

Q. Did you ask Lieutenant Hanley why he didn't get them away earlier? A. No, I didn't, only when I asked him to make that statement.

Q. What reason did he give you? A. He didn't give me any reason.

Q. You mean you as Chief of Police asked him— A. I figured that all the time.

Q. You mean you as Chief of Police asked him why he didn't get those men away any earlier and he didn't give you any answer? A. I figured that

40

up. He didn't tell me there was any intervening time.

Q. You asked him why he didn't get them away earlier? A. Yes.

Q. What did he say? A. He said that was as early as he could get them away.

10 Q. And you didn't ask him for any explanation of that? A. No, I didn't ask him for any explanation of that.

Q. You are satisfied he had a perfectly good reason for not getting them away earlier? A. I probably did at the time.

Q. And a good reason would be his not being able to get the patrol wagon? A. That would be a good reason if they couldn't get the wagon.

20 Q. You didn't have anything else in your mind as a reason why they didn't get away earlier? A. At that time I didn't.

Q. You said the Monday afterwards— A. That is when I commenced to get wind of something, and then I commenced to look around to find out things.

Q. What did you find out? A. He didn't tell me why he couldn't get away.

30 Q. You are the Chief of Police? A. I am not supposed to be there to watch what he did, I am telling you I was there until a quarter after eleven.

Q. You left at a quarter after eleven? A. Stick that in your head, and all the men were there and statements taken from them at that time, and they were all cleared up. Now if they didn't get a patrol wagon in time that is not my funeral. That is yours, not mine.

40 Q. Is that anybody's fault? A. I don't know. It is up to you to prove that the patrol wagon was busy at the Sixth Precinct. It is not up to me to prove that.

- Q. Do you know whether it was busy or not?
 A. I don't know anything about it.
 Q. Did you ask Lieutenant Hanley about it? A.
 Did I ask Lieutenant Hanley about it, no.
 Q. You were dissatisfied with Lieutenant Han-
 ley's handling of the thing?

10

Mr. Reich: I object. The Chief hasn't testified that he was dissatisfied. He testified that he got a statement about the case. Here is a statement that has been marked for identification. If you want to introduce it in evidence I have no objection.

Chairman Kleffman: Objection sustained.

Mr. Benny: If the Commissioners please, this is the Chief of Police—

Chairman Kleffman: Is this the same 20
 thing?

Mr. Benny: I am going to ask this question, and I want it on the record.

Chairman Kleffman: Are you going to ask the same question counsel objected to?

Mr. Benny: I didn't finish the question, and I was interrupted.

Chairman Kleffman: Finish your question.

Mr. Benny: Then if counsel wants to ob- 30
 ject all right.

Chairman Kleffman: Very well.

- Q. You were dissatisfied with Lieutenant Han-
 ley's handling of the situation— A. No, I don't
 say that.

Mr. Benny: Now, if your Honors please,
 I want this question finished before the Chief
 answers.

40

The Witness: That is a question, is it not?

Mr. Benny: Will the Chairman of the Board instruct the Chief—

Chairman Kleffman: Yes.

10 Q. You were dissatisfied with the handling of this situation that night by Lieutenant Hanley in this, that he failed to get the prisoners away from headquarters to the Seventh Precinct as early as you thought he should get them away? A. Yes, I was dissatisfied.

Q. Now, being so dissatisfied, did you ask Lieutenant Hanley for any explanation? A. No, I did not.

20 Q. Why didn't you? A. Well, for the simple reason I don't talk to him.

Q. You are bad friends, you mean? A. What do you know about that?

Q. You are not on speaking terms with your own lieutenant? A. Only on business matters.

Q. Isn't the conduct of the lieutenant in charge of a police headquarters of yours a business matter between you and him? A. Yes, certainly it is.

30 Q. All right. That being a business matter between the lieutenant and yourself, why didn't you ask him for an explanation of something you were dissatisfied with? A. I don't know why I didn't. I didn't get that statement until the other day, and since then he has been sick.

Q. That is dated October 10th? A. Yes, and he has been sick.

Q. That was twelve days after the accident? A. Yes.

Q. How long has he been sick? A. Four or five days.

40 Q. You saw him every day? A. Pretty near every day.

Q. And the Monday after these boys were there you were still dissatisfied? A. It is up to you to prove that the patrol wagon was busy; that they could not get the patrol wagon. I don't think that patrol wagon was busy. That is my candid opinion.

Q. And you didn't think enough about that to ask? A. I did, and he didn't give me any answer only that that was as quick as he could get them away. 10

Q. He told you that that was as quick as he could get them away? A. Yes.

Q. And he is in bed now? A. Yes, or he would be here to talk for himself.

Q. Now, Chief, you made a charge against Lieutenant Broadhurst here of recommending to prisoners the name of counsel? A. Yes. 20

Q. Did you ever do that yourself? A. No, sir.

Q. Never did? A. Never.

Q. Do you know Jack Feinberg? A. Yes.

Q. A pretty good lawyer? A. Yes.

Q. You have recommended him, haven't you? A. What?

Q. You recommended him to your own nephew? A. No, sir.

Q. I show you a letter and ask if that is your signature? A. I will read it and see. 30

Q. Look at the signature, that is what I want you to tell me, whether the signature is yours? A. No, sir.

Q. That is not your signature? A. No, sir.

Q. Did you ever authorize Lieutenant Hanley to sign your name to any communication to Feinberg? A. No, sir.

Mr. Reich: I would like to object to any of this testimony relative to the Chief recommending anybody, or anybody in the police 40

department recommending anybody. Nobody else is on trial here but one man.

10 Q. If this goes to the veracity of anything the Chief has said, well and good. The Chief has said that he did not sign that letter. Now further than that I don't think I should allow him to go.

Chairman Kleffman: Objection sustained. Counsellor, you will have to confine your cross examination to the facts of the case.

Mr. Benny: I have a letter signed "William F. Clossey," and he says it isn't his signature. That ends it.

Chairman Kleffman: We have passed that.

20 Q. You have known Lieutenant Broadhurst ever since he has been on the force, I suppose? A. Very near twenty years.

Q. Was there ever a charge against him before? A. No.

Q. His record is absolutely good? A. Yes.

Q. One of your very best officers? A. I wouldn't say that.

Q. A good officer? A. Fair.

Q. And record clear? A. Yes.

30 Q. Are you on speaking terms with him? A. Yes.

Q. Friendly with him? A. Yes.

Q. Is Lieutenant Hanley the only one you are not on speaking terms with under you? A. Yes.

Mr. Benny: That is all.

(Witness excused.)

40 Mr. Reich: That is the case for the Commission.

Complainant rests.

THOMAS J. BROADHURST, sworn.

Direct Examination by Mr. Benny:

Q. Lieutenant, how long have you been on the force? A. Nineteen years and ten months.

Q. Where do you live? A. 103 West 41st Street, Bayonne, New Jersey. 10

Q. What does your family consist of? A. My wife and three children.

Q. What are the ages of the children? A. Fifteen, eleven and three.

Q. You remember the accident on the 28th of September? A. Very well.

Q. And you got to headquarters—first of all did you go to the scene of the accident? A. Yes, sir, I was at the scene of the accident. 20

Q. Will you just tell the court here what you saw there and what you did. Just tell them the story. A. Just at the scene of the accident?

Q. All the way down, from the accident right down through the whole thing. A. The whole story?

Q. Yes. A. I was standing in front of Loew's Theatre and a man went by on an automobile blowing a whistle. My motorcycle was running and I went to headquarters. I said to Hanley, "Anything doing?" And he said no. Just then the 'phone rang, and he said, "There is a bad accident at North Street." I said, "Joe, jump on the wheel," and I followed him up. I arrived at North Street and there was an awful crowd of people in the street and cars and everything else was all jammed up. When I arrived there I found Patrolman Gleason and Patrolman Hertline. We got some of the people from the middle of the street and got them down on the sidewalk, and Hertline, I sent him to the corner of North Street and told him to stop traffic, to allow 30 40

people to cross and to not bother with the people in the middle of the block and to get the traffic going. So finally we got the traffic going and finally I said to Gleason, "What is there to this thing?" and he said, "There is a man and woman in the hospital and they are both in very bad shape." He
10 said, "There is another girl in the hospital who is not in such bad shape and," he said, "I believe another man, but," he said, "I believe anyhow this one girl is liable to pass out of the picture." I said, "Who else is interested in this accident?" He said, "There is a car over here with some men in it from New York"; and he said, "they are part of the accident." "Well," I said, "now we will get things
20 straightened out here and you take them to headquarters." I was at the scene of the accident then fifteen minutes maybe twenty; I took those men to headquarters; that is, I started away with them, and they had some trouble getting their bumper straightened out and one thing and another, and then when they went away the crowd started to thin out, and there was a crowd around the car and I said to Hertline, "You stay here until this is
30 straightened out and then you report back to headquarters." And then I got on my wheel and in the meantime Schechtle had come down and I rode down to headquarters. When I arrived at headquarters Lieutenant Hanley was in there and these men were in there and another witness, a man who was driving another car. Patrolman Kelty took his statement. Patrolman Schechtle and Gleason were just getting ready to take Madigan's statement. He was in a very nervous condition, and he had an awful lot of difficulty in finding which way was north, east, south and west. I drew a diagram of North Street and the Boulevard and I marked
40 it north, east, south and west, and straightened

Madigan out, and I told him, I said, "Take it easy; forget it. Take it easy." He was in pretty bad shape. He drank twenty or thirty glasses of water in the course of an hour. I had started to clear out the room. I said, "Find out who is who here." You could hardly get your breath, there were so many people, and this one man, by the name of Kirby, he was there. He said he was a friend of the boys' and I let him stay in there, this one witness. Schechtle, Gleason, Kelty, Lieutenant Hanley,—Lieutenant Hanley was at the desk. I started to take a statement of one of the three witnesses. Patrolman Bilek came in headquarters and brought a girl and some more people in, and I went down to see who they were, and the girl was a girl named Miexsell from Weehawken, I think; and Hanley was taking her statement while I was taking the other, and he said, "What will we do with her?" And I said, "She is a resident of Hudson County and she is in tough shape. Send her home." That left ten or fifteen people in headquarters, and I took the statements, and in the meantime they brought in a man named Coachi and some more people interested in the accident in some way. We didn't stop to ask them, we just went along. I took three statements from the witnesses in the car and I took the statement of a man named Coachi,—something like that. I don't just get the name exactly right,—but I took four statements anyhow; and by the time I had the four statements taken or was taking them the Chief arrived in headquarters. Patrolman Gleason had been sent back on post after bringing these men in, and he called up that he had a drunk driver, and Hanley said, "Bring him in." We got all the statements together and sorted them out and there were four men to be held as material witnesses, Dulligan, Connors, Madigan and another man named Lang

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- who was a passenger in the other automobile and was sitting alongside of the man and woman that was killed. Thomas Madigan was held on a charge of manslaughter. I said, "These other statements are all from witnesses," and I folded them up and I gave them to Bilek, and I said to him, "Bring
- 10 Madigan in here." He brought Madigan in to the rail. The Chief was standing at the rail. Lieutenant Hanley was at my left, Patrolman Kelty was in the aisle at the other end of the desk toward the Boulevard. My son Jack stood in the corner. I called him in and I told him, "Madigan—" at that time, I said, "Madigan, you are going to be arrested. You are going to be charged with manslaughter. Your bail will be \$2,500. If you have got any
- 20 friends you had better telephone to them to get you out." I said, "The other three witnesses will be held in \$500 bail." I said, "You are strangers." "You are going to go to the Sixth Precinct Station House." And I said, "All right, Kelty, call the wagon." Kelty called the wagon. His answer from calling the wagon was that it was out. It was around 11:50, and I think the blotter shows 11:50, and Chief Clossey was then standing at the rail in headquarters. The man on the desk said that there was something about the patrol wagon taking a re-
- 30 lief down around the Hackensack Bridge or some isolated spot from the Sixth Precinct. In about ten minutes Kelty called him back again and I guess he was a little peeved about being bothered about the wagon, and he said, "We will send the wagon when it comes." In the meantime these four boys had been sent in the back room. A drunken driver had been brought in there and he was to be examined and was examined by Dr. McDonell. The Chief was there then. I held Bookstaver there to take
- 40 that car to the Tiger Garage. Bookstaver didn't

get there until in time to answer roll call around 11:50. This man Coachi was there.

Mr. Benny: Now that has gotten you up to 11:50.

A. (Continuing) Wait a minute. These men were 10
in the rear room and the man he told you about
being a detective is a jitney supervisor by the name
of Hayes, who was coming out, and I said, "Get
these fellows out of here; they are going to examine
a drunk driver"; and Hayes said, "Put them in the
back in our place." There isn't much space there.
There are some lockers back there. I don't know
what. I sent Bilek back to bring Madigan out, and
Madigan stood at the desk, and while we were at
the desk there was a reporter for the United Press, 20
and Chief Clossey ordered Bilek to give him a story
for the press, and he went in the back room and
when he went in the back room Madigan was then
waiting alongside of him and there was another
newspaper man. They went out and telephoned the
story afterwards and Jack Stuey, and about that
time the Chief left. The drunken driver had been
disposed of, and I held Bookstaver there, and about
that time—the Chief left about that time—that is
when he went out of the picture anyhow. He went 30
home then. About what transpired in between that
didn't amount to so much, but Bilek went away
with the men. The Patrol wagon arrived and Bilek
took the men away, and somewhere in the neighbor-
hood of about 12:40. In the meantime Lieutenant
Fanning had called me up and asked me to work
for him. I was working four to twelve, and he said
he was in pretty tough shape. He had a violent
attack of something. He was at home in the house.
He said, "If you don't work for me I will come 40

- down but I won't be able to do any work and you owe me a day and will you work for me?" And I said, yes. The reason for my boy Jack being there, he was going home with me. I sent him home then. He was at Loew's Theatre and he was going to go home with me and then I sent him home. That was
- 10 about the time I sent him home, about in the neighborhood of 12:40, 12:35, something like that. This man Kirby and another man from New York, a young fellow—maybe he is there—I don't know—but he was one of the boys—came into headquarters and they stood in front of the desk, the railing. They stood there first and I stood in the back. Tom Hanley was gone and Lieutenant Rabold was then working on the desk. He was sitting there—whether he was sitting there or not I can't say. He
- 20 is here and can answer for himself. Kirby said to me, "Where are the men?" I looked at him and said, "You are the fellow that was here without the shirt, aren't you?" And he said, yes. "I got Madigan's coat," or somebody else's coat, and he said, "I want to bring it over to them." And he said to me, "Where are the men" And I said "They are at the Sixth Precinct"; and he said, "I got a bank book in my pocket and," he said, "I want to bail"—not Tom Madigan but the other Madigan—
- 30 he said, "I want to bail him out anyhow and maybe another fellow." I said all right. I knew that he couldn't bail them out with the bank book but I didn't want to make his feelings drop at all anyway, and I said to him, "All right, I will call the Sixth Precinct." And I called the Sixth Precinct Station and the Lieutenant on the desk, I told him, I said, "There is a man here that has a bank book and he wants to bail out one of the Madigans or some of them that were arrested in that accident";
- 40 and he said, "You know the bank book is no good.

Why didn't you tell him that?" And I said, "He is here and wants to get his friend out." And he said, "Don't let him come up here; we are just sending them to the Seventh Precinct." Kirby—we were in the front—at that time some men started to come in and report off and make out statements and one thing and another, and we went in the back room and he and I and his friend was talking while the men were reporting off. If I am not mistaken they were both sitting down and I was talking to them, and he said to me, he said, "Now listen", he says, "Lieutenant, there is a way to do all these things." He says, "I am interested in Madigan." He says, "His mother is a nice old woman and she is very nervous"; and he said, "If I can get one of those boys out I can send them over home and tell the mother that Tommy is over at our house and he is all right; he will be back in the morning"; because he said, "She is a very worrisome woman." It seems that this boy had lived in New York in the neighborhood and that they knew one another all their lives; I said to him, "Well, you can't do anything with your bank book and this is Saturday night." And he said to me, "What would you do?" And I said, "Why don't you see your Committeeman or get a lawyer?" I said, "That is what I would do if I was in your place." And he said, "Well, I have only lived over here a little while. I married a girl that lived over here",—I believe his story was—and that he worked with this boy in New York; and he said, "I don't know anybody." And he said, "Do you know a lawyer?" And I said yes, I know a million lawyers. And he said, "Well, could you get somebody?" And I said, "Listen, boy, don't you know this is Saturday night and everybody with ten dollars is down at Asbury Park or Keensburg or Atlantic City? It is hard to get

- anybody home tonight. They are away." And he said, "Well, can't you try somebody?" And I said, "Yes, I can try somebody." I did try somebody. I tried to get Julius Reich on the 'phone. I got no answer. Then I called Ezra Nolan on the 'phone. I got no answer from Ezra Nolan and hung up and
- 10 went back in the rear room again. Somebody sitting in that room—there were at least half a dozen men at the time—I don't know just who they were—but there were several men in there—there usually were twenty-four or twenty-six men who report off within from 12:30 to 12:45—most of them in the neighborhood of 12:45—and there were at least I say five men or four men to be positive, but there might have been five or six—and someone says, "Jack Feinberg has just gone down the Boulevard."
- 20 He says, "Why don't you try his house?" I said, "Not so bad." I says, "He might be home." I called Feinberg's house and a woman answered the 'phone. I don't know whether it was Feinberg's wife or Feinberg's servant. And I said, "Is Mr. Feinberg there?" And she says, "He is in the bathtub"; and she said, "Wait a minute." I waited a minute and she came back and said, "As soon as he gets out he will call you." I went back in the rear room with these two boys again and I stood there
- 30 talking and I said, "This fellow might call and he might not. It is just according to what kind of shape he is in." And it may be five, six or seven minutes anyhow the 'phone rings and Lieutenant Rabold answers the 'phone and he says, "Somebody to talk to you." And I picked up the 'phone and he says, "This is Feinberg. Do you want me Broady?" And I said yes. I said, "There has been an accident on the Boulevard", I said, "And there are four boys locked up in jail, one of them for
- 40 manslaughter and three as material witnesses" I

said, "There is a friend here who wants to do something for them." He says, "In the line of bail?" I says, "He wants to get them out." And I said, "And he wants to hire a lawyer or somebody to get them bail." I said, "He wants to get one boy out." That was the drift of this boy Kirby's conversation, that he wanted to get one out as long as he could get one out he could get him home and pacify Madigan's mother that everything was all right among the boys. I think that was agreed among the boys,—I don't know—but that is the way they talked. So he says—wait a minute now—Feinberg he said to me—I told the story about the boys—and he said, "Put them on the wire." So I says to the fellow Kirby, "Here is a lawyer, you can talk to him." No, in the meantime— I am a little ahead of my story—I said to Feinberg—Feinberg said to me, "Well, I can't do anything until morning." He said he wouldn't ask no Judge tonight. And I said, "There have been plenty of fellows locked up here that have been gotten out at all hours at night"; and he said, "Yes, but you want to remember those are probably Hudson County fellows." And he said, "You say these fellows are from New York?" I said, "Yes", and he said he wouldn't want to ask a Judge tonight, but he said, "Put this fellow on the wire." And I said to this fellow "Feinberg wants to talk to you." And he said, "What can I do if he can't do anything until morning?" And he said, "You talk to him"; and I told him that he wanted to see him in the morning, and he said all right. And I told him, "This fellow wants to see you in the morning; he can't talk." He told me he was nervous and he was all shook up about the thing. And in the meantime when he got Feinberg on the wire—I am a little ahead of my story—I brought these two boys from the rear room along-

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side the telephone. Kirby wasn't two feet away from me when I was 'phoning. Neither was his friend. I don't know his name. I don't know whether he was one of those boys or not. Kirby wasn't two feet away from me when I was talking, because I took the 'phone like that and I said,

10 "Here, talk to him", and he said, "I am all nervous and what can I do?" And he said, "Tell him to meet me in the morning." And Feinberg says, "Tell him to come down to my office." And he said, "Where is his office?" And I said, "Down in Bayonne." And he said, "How can we? We haven't got a car?" And I said, "These fellows haven't got no car, Jack"; and he said, "I have an appointment in my office tomorrow morning at ten o'clock"; and he said, "It is something about"—he told me he had

20 to get some printing to go before the Supreme Court, something of that kind—a brief that had to be printed—and he said, this fellow then said if Feinberg would come to his house at 9:15 that he would be ready, and Feinberg said, "No later than 9:15 because he had to be back at 9:15 to meet someone at ten o'clock." The fellow says—Kirby says, "All right, that is fine." Now these fellows—he said to me, "Now that is settled." And then he said, "I have got a coat that belongs to one of these

30 men and" he said, "I also want to get them some coffee and some sandwiches." And he said to me, "Where is this station house?" And I told him it was down at the next car track and over. He said, "Do you think they will let us up and I said, "I don't know whether they will or not." I said, "If they won't let you up you can send stuff up to them anyhow. I don't know whether it is against the rules to let you up or not, but they can send stuff up to them." And he said he would like to get him

40 his coat anyway; and he said, "Will you go over and

show me where it is?" And I said yes. And so I went over to the Seventh Precinct with them and Lieutenant Lyng was on the desk, and I said, "These boys were in an automobile accident and he wants to see them. Is it against the rules?" And he said, "No, excepting in cases that are bad, but", he said, "That is all right." And these two boys went up in the elevator and I stood there talking to Lyng and listening to him explain a case where some men came in and wanted to bail out another— 10

Mr. Reich: Suppose you go right ahead with this case.

The Witness: Supposing I tell my own story. This ain't no joke; I don't think so anyhow.

Chairman Kleffman: All right, go ahead with the story. 20

The Witness: I think the story is all right. Of course if the Commissioners object I will have to agree with them.

A. (Continuing) So they went up in the elevator and Lyng was explaining this thing to the man—I am getting to this, Mr. Reich.

Mr. Reich: All right, if it is material go ahead. 30

A. (Continuing) So they went up in the elevator themselves. The man took them up that runs the patrol wagon, or reserve man, whatever he is. In a minute or two he came down, the man, and Lyng said, "Why don't you go up and see the new jail?" And I went up with him and when we got out of the elevator I talked to the Lieutenant and I probably talked four or six minutes about the two boys 40

that tried to break into the Rialto Theater or tried to blow the safe.

Q. Where was Kirby and that other man at that time? A. They were then talking to two or three men.

Q. Did they go up in the same elevator? A. 10 They went up in the same elevator, not the trip I went up, but the trip before I went up. I went up in the elevator alone with the man that runs it.

Q. With who? A. With the man that run it. When I went up I went up alone. They were then talking to two or three men, I think two of the men that were interested in the case, and I think Lang was there because in the meantime Lang's arm was bruised up. His arm was bandaged, and I think he was standing there. Anyhow we walked 20 over toward the elevator and the reserve man, or the man, whoever it was—his name is Barend. He is working there, running the elevator, and he says to me, "I will show you the prisoners, but take off your side arms." And I took off my holster and gun and put it on the table where Dever was taking a statement from this prisoner. So he had to put this prisoner back and when he put the prisoner back in the cell block I walked back through the cell block with him, and while we were in there 30 one of those four men that were in there came over and wanted to know if they couldn't be put together in a cell, and the keeper told them, he said, "No, that is against the rules." That is all the conversation I had with them. In fact, I didn't have it. I was listening to it. It was the keeper had it, and when we came out we came out to the elevator. Kirby and his friends from New York and myself and Detective Dillon and Detective Dever went down in the elevator; and he gets downstairs and 40 bought some sandwiches—

Q. Who? A. Kirby. He said he wanted to give them something to eat. And I said there is a restaurant up at the corner; and we went up and had a cup of coffee, Kirby and I and his friend from New York, and he bought some stuff for Lang, the fellow who was in the other car, and we came back to the station house and I stayed downstairs and they took the sandwiches up,—and while we were downstairs the ambulance surgeon goes up to dress Lang again. He complained of pain, and I talked to the Lieutenant at the desk, and then these two boys came down, and while the three of us were standing in the middle of the floor this girl was brought in and we went out of the station house. The fellow in New York was going home. In the meanwhile, while we were in headquarters he asked me if his sister's home in Long Island would be accepted as bond, and I told him it was property out of the State and, I said, "I don't think so, I think you would have to have property in the State." In fact, I knew that, but I just told this boy that. I knew it wouldn't be accepted. I figured it wouldn't. My impression was that they couldn't accept it, and I don't think they can, whether it was right or wrong, but it was asked here as evidence tonight, so I put my part of it in. So he said, "There is no use of me going home." I believe he was going to call Madigan's mother, but then he changed his mind as long as he couldn't do any good, so they agreed to go up and sleep together in North Street. We went down to the station and they got in a bus and went home.

Q. While the four men mentioned, Kirby and the other three were in the Boulevard Police Headquarters did you have any talk with them in the back room about bail or lawyers or anything of that kind? A. No, sir.

Q. You heard the testimony of one or two of them here that you did. A. Yes, sir, two of them said I did.

Q. Were you alone with them at any time in police headquarters? A. No, sir.

10 Q. Did you have any talk with any one of those four, Kirby or the other three witnesses, when you came to the Seventh Precinct Police Station? A. No, sir, other than the conversation where one of them—I don't know—whoever it was—they asked if they could be put together in a cell and the keeper told them it was against the rules; and he said, "Anyhow when you fellows get tired of talking you will want to sleep."

20 Q. Were you at any time in the Seventh Precinct Police Station that night free from the attendance of the keeper or some other officer? A. No, when I went up in the elevator—

Q. Alone? A. No, the elevator attendant was running it. He is a policeman.

Q. When you got out of the elevator who was there? A. Detective Dillon was over on my right in the corridor, maybe eight or ten or twelve feet over.

30 Q. Were you at any time in the Seventh Precinct Police Station that night in company of Kirby or any of the other three witnesses named when there wasn't a police officer or keeper with you? A. No, sir, not in the station house, in the station house or the jail.

Cross Examination by Mr. Reich:

Q. Lieutenant, on this particular night there was quite a lot of confusion around headquarters, wasn't there? A. Plenty.

40 Q. Running in and out. These four men when

they were brought in were brought in in the usual way, weren't they, booked and their statements taken? A. Yes, sir.

Q. And when you finished taking the statements Officer Kelty was helping you? A. Yes.

Q. And was Lieutenant Hanley taking statements too? A. Yes, sir. 10

Q. And who else? A. Myself.

Q. And yourself? A. Yes, sir.

Q. How many men involved in this accident were around? A. That were involved in the accident? That were around as witnesses and—

Q. Yes, that were around there held as material witnesses? A. Five men. A man named Lang along with these other four boys.

Q. Is Lang here? A. I don't know.

Q. Was he held in bail too? A. \$500 bail. 20

Q. How about Coachi, he was a witness too? A. Yes, sir.

Q. Was he held in bail? A. No, sir.

Q. Why not? A. He is a resident of Hudson County. The reason these men were held in bail I believe was because they were out of the State.

Q. Was Lang out of the State? A. Yes, sir, Longfellow Avenue, Bronx, New York. I don't know the number but it is Longfellow Avenue. It is named after the poet. 30

Q. After these boys' statements had been taken Lieutenant Hanley took care to see that the wagon was brought over to take them over to the precinct to have them booked? A. I don't know that Lieutenant Hanley did anything like that. I told Lieutenant Kelty to get the wagon after I had told Madigan in front of the railing at headquarters,— I said, "Go out and get them and bring them in;" and I told Madigan, "You are going to be locked up; you are going to be locked up for manslaughter. 40

10 Your bail will be \$2,500 and the other three will be \$500 each." I took the statements and separated them. I put the statements of Lang and these three boys together in case the man on the Sixth Precinct Desk would want to see the statements, and Bilek put that in his pocket and the statements he held in his hand going out and he turned them over to Kelty, and he said, "Call the wagon"; and Lieutenant Hanley I think entered in the book the first time the wagon was—the first time showed was 11:50, and I think the book shows 11:50. The book was looked over and if I am not mistaken it shows 11:50, and at that time there were still plenty of people in headquarters.

Q. 11:50? A. I think so; I am not positive on that but I am pretty sure it was 11:50.

20 Q. Lieutenant, will you look at this—I don't know just how you do add it up—and see if there is any time in there? A. That is the wrong book.

(Ten minute recess.)

(After recess.)

30 Chairman Kleffman: You may proceed, counsellor.

Cross Examination by Mr. Reich (continued):

Q. Your roll call book, Lieutenant, shows the arrest at approximately 9:20 and it indicates "Bilek to the Sixth Precinct at 11:50." That is about your recollection of the time that all this took place? A. Yes.

40 Q. So that between approximately 9:30 and 11:50 these men were at one time or another somewhere in headquarters? A. Between what time?

Q. Between 9:30? A. Oh, no.

Q. What time were they brought to headquarters? A. They were brought to headquarters in the neighborhood of ten o'clock. It might have been five or ten minutes before or five minutes after.

Q. Well, from that time until 11:50 then they were in headquarters? A. Yes. 10

Q. That is approximately two hours? A. Yes, sir.

Q. And you took their statements together with other officers that were helping you? A. Yes, sir.

Q. And that was a procedure that took how long? A. It took up until the time that I walked into the desk and asked for all the statements.

Q. When was that? A. Wait a minute. I will get you within a couple of minutes of it. I walked into the desk and I got all the statements that Kelty took and Hanley took and I got them all together and I took the statement of five men that were to be arrested, and the other statements I piled over to one side and this is the time that Kelty called for the wagon. Now the exact time that that was I am not so positive of. I won't say the exact time, but I think that the Lieutenant on the desk in the Sixth precinct will be able to give you the time they called for the wagon. That I don't know. I think maybe he keeps a record of the time the wagon is called. 20 30

Q. Lieutenant, it has been testified by these men that there was some suggestion or some talk had between yourself and themselves about bail. Is that correct? A. Yes, sir.

Q. And you told them that usually in those cases— A. Well, one minute. Well, go ahead with your question.

Q. That usually the bail was \$2,500 for the 40

driver and \$500 for the occupants of an automobile involved, is that correct? A. No, sir.

Q. What was it you did say about it? A. I called Madigan, got Bilek to bring Madigan in and he brought him in front of the rail, and I told Madigan then, "You are going to be taken to the
10 Sixth Precinct Station and arrested on a charge of manslaughter. Your bail will be \$2,500 and the bail must be satisfactory to the County Judge." And I said to the other three men, "With you and the other man Lang in the car," the bail will be \$500 each as material witnesses.

Q. When, Lieutenant, was the first time that this gentlemen here showed you the bank book? A. Just as true as there is a God in heaven I never saw a bank book and I hope I go home and find my
20 children dead if I ever saw a bank book. You said, "Saw a bank book." Remember that.

Q. Did he tell you he had a bank book? A. Yes.

Q. Did he tell you how much he had in the bank book? A. No.

Q. And you went to the Seventh Precinct Police Station—when you went to the Seventh Precinct Police Station with Kirby and he had purchased these things, sandwiches and coffee and so forth—I think one of the Madigan's testified that you were
30 there along with Kirby at the time talking, and that while you did speak to the keeper the keeper withdrew from the group at the time that anything was spoken relative to their release. Do you recall that? A. No, sir, I spoke to none of those boys in the station house.

Q. I am talking about in the cell block. A. That is what I am talking about. When I went up there in the elevator—I spoke to none of those boys at all.

40 Q. I think the other Madigan boy who drove

the car also stated in substance practically the same thing. Do you still claim that there was somebody else there at the time that the conversation was had? A. Which conversation?

Mr. Benny: Wait a minute. I take the question to suggest that Thomas Madigan testified that he spoke to this man. 10

Mr. Reich: No, Thomas Madigan testified, and so did his brother if I recall the testimony correctly, that Lieutenant Broadhurst was standing with the keeper when they first came in and that the keeper withdrew for some reason or other—I don't know why—and that then there was a conversation had between the two Madigan boys and the Lieutenant about—whether it was bail or arrangements for getting bail or something along those lines—do you recall that testimony? 20

The Witness: No, sir.

Mr. Benny: I object to that on the ground that Thomas Madigan made no such statement and there is no such statement in the evidence and therefore a statement about hearing Thomas Madigan say something he didn't say,—there is no such testimony by Thomas Madigan. 30

Q. Did you hear either one or both of them testify, Lieutenant, that you did have a talk with them while they were in their cells? A. Some one of those four boys have testified here that I spoke with them, not while they were in the cell but while they were behind this screen door, and then there is a block door two or three feet from that and then there is another door that locks you alto- 40

gether. You can't get this door locked because you have got to go down in the elevator. He said that while he was there I spoke to him. I did not speak to him. In fact I spoke to no one while I was in that station house with the exception of the man that brought me up to the elevator. Detective
10 Dillon and Detective Dever, and I don't know whether I spoke to Burns or not. I might have; he was sitting over in the corner.

Q. Who is Burns? A. He is in charge of that prison I think. He was over in the corner.

Q. Were you on that floor during that time? A. Yes.

Q. Did you have any business with Detective Devers? A. None whatsoever.

Q. Any business with Dillon? A. That is a
20 funny one.

Q. Did you have any conversation with him or any reason to see him that night? A. You mean to make an appointment?

Q. No. Did you have any particular reason to talk to him at all? A. Yes.

Q. And were you told that he was up there? A. No.

Q. But you went up on that floor? A. Yes.

Q. What for? A. To see the new City Prison.
30 I have never been there before.

Q. You just went up there to see it? A. I was in the station house and I got talking to Lyng and I said, "It is a nice place"; and we got talking about it and the man that run the elevator says, "Come on up and I will show you the place"; and I went up in the elevator with him.

Q. Now Lieutenant, Kirby testified that when he first came to police headquarters he was there awhile discussing things—I don't just know what
40 they were—I don't recall—and then he returned

home, he said to get his bank book. He further testified that he returned to headquarters. Do you recall his absence in that space of time when he went home? A. I don't remember Kirby being in the place or anything with the possible exception of when I inquired who was who. Kirby was then dressed with an athletic shirt on and no hat, and he said that he was a friend of the boys in the accident. Now he goes out of the picture as far as I am concerned until he comes back again with a friend from New York. 10

Q. That is just the point I am getting at. He did come back? A. Yes.

Q. Was he dressed any differently the second time than he was the first time? A. He had his shirt and collar and hat on.

Q. Then he was somewhere from the first time you saw him until the second time? A. He surely must have been somewhere. 20

Q. When he came back the second time did he have a talk with you about trying to get the release of these boys, or some of them or all of them? A. One boy he was interested in. He was interested in one boy, one of the Madigan boys more so than the others, and he did furthermore inquire from the man on the desk what the bail would be, and when I called the Sixth Precinct for him I asked the man on the desk what the bail will be and he said it will be around three or five hundred dollars, and he then said maybe he could bail two of them out. 30

Q. And up to that time you didn't know anything about a bank book, as you say? A. No, Mr. Reich, I absolutely knew nothing about a bank book and know absolutely nothing about a bank book today. Not then, but today I know absolutely nothing about a bank book. 40

Joseph Lynch—Direct Examination.

Q. The next day, it has been testified, Mr. Jack Feinberg met Mr. Kirby. Did you make those arrangements? A. Yes, sir.

Mr. Reich: That is all.

10 Re-direct Examination by Mr. Benny:

Q. At whose request did you make that arrangement with Mr. Feinberg? A. At the request of Mr. Kirby.

Mr. Benny: That is all.

(Witness excused.)

20 JOSEPH LYNCH, sworn as a witness on the part of the defendant.

Direct Examination by Mr. Benny:

Q. Lieutenant Lynch, were you the desk man at the Sixth Precinct Station house the night of this accident, September 28th last? A. I relieved the man at twelve o'clock, or maybe at eleven o'clock. I don't really recall what time it was. The book will show what time I relieved him.

30 Q. Will you produce the book? A. Yes, this is it. September 29th, wasn't it?

Mr. Broadhurst: On the morning of September 29th before 1:40 and 1:50.

The Witness: I relieved him at 11:30 that night.

Q. Have you any record there of a call from the Boulevard Police Headquarters for the wagon? A. Yes, I believe there is one here—
40 "11:45, auto to Boulevard Police Headquarters for prisoners."

Q. Was there more than one call that night for the wagon? A. That I couldn't say.

Q. What time did you go on? A. 11:30.

Q. And that is 11:45? A. Yes.

Q. Is there any record of where the wagon was that night at about that time, whether it was out on some other call? A. One here at 11:10, "Auto patrol to Nelson Avenue." 10

Q. Where is Nelson Avenue with reference to the Sixth Precinct Station House and the Boulevard Police Headquarters? A. Oh that is quite a distance, Nelson Avenue, from the Sixth Precinct.

Q. About how far? A. I would say three-quarters of a mile.

Q. And how far from Boulevard Police Headquarters? A. Maybe a mile and a half or two miles. 20

Q. Is there any record in your book of when the wagon came back from Nelson Avenue? A. No, I don't see it here. It might have come back in my time and I failed to put it down.

Q. But at 11:10 you saw it went to Nelson Avenue? A. No, that wasn't my time.

Q. But the record shows at 11:10 p. m. on the 28th of September the wagon was sent to Nelson Avenue? A. Yes, sir.

Q. And at 11:45 the same night it was sent to Boulevard Headquarters? A. Yes. 30

Q. Are you reading now from the station house blotter? A. Yes, Sixth Precinct Station House blotter.

Cross Examination by Mr. Reich:

Q. Lieutenant Lynch, how long does it take the patrol wagon to go from the Sixth Precinct to Nelson Avenue? A. I couldn't tell that, about five minutes. 40

Q. So if it left at 11:10 and made the round trip to Nelson Avenue, a round trip without a stop of any kind, it would take about ten minutes, would it not? A. Probably, yes.

10 Q. Is there any record in that book of what occupied the patrol wagon at Nelson Avenue that particular night to cause a call for the patrol? A. No, there is nothing here only just "Auto patrol, patrolman Murray to Nelson Avenue." That is all it says.

Q. Is there anything in there about an emergency call to Nelson Avenue? A. No, sir.

Q. Would that be noted if there had been such a call? A. No, sir.

20 Q. When the Boulevard Police Headquarters called the Sixth Precinct for the wagon is that noted in the record? A. Yes, sir.

Q. And you have one notation at 11:45, is that correct? A. I have.

30 Q. And what time have you got—if the record of the Boulevard Police Headquarters shows that the check-out at Boulevard Police Headquarters was 11:50, that would show approximately five minutes from the time that your book shows it leaving the Sixth Precinct—if it left the Boulevard Headquarters at 11:50 that would be approximately a five minutes run up to Boulevard Headquarters. That seems to coincide quite favorably, does it not?

Mr. Benny: We will admit that.

Q. What, if anything, does your record show as to the intervening space of time between 11:10 and 11:45 for the use of the patrol? A. Doesn't show anything.

40 Q. Doesn't show any use of it at all? A. No.

Re-direct Examination by Mr. Benny:

Q. You remember Lieutenant Broadhurst 'phoning you that night, the night of the 28th or early in the morning of the 29th, about these boys being in police headquarters, in Boulevard Police Headquarters, and that he talked to you about bail? A. Yes, I believe he did. 10

Q. Do you remember what the conversation was? A. Well, I just can't recall. I understand something about bail, and I told him they were on their way down to the Seventh Precinct. "They are on their way, ready to go in the wagon."

Q. What time was that, if the book shows? A. I wouldn't hold no record of that.

Q. Would the record show what time they left your precinct to go to the Seventh? A. No. In the excitement I guess I forgot to put that in. 20

Re-cross Examination by Mr. Reich:

Q. Does it show a time for the booking of the men in the Sixth Precinct? A. This accident is booked at 12:40.

Q. 12:40? A. 12:40.

Re-direct Examination by Mr. Benny: 30

Q. Lieutenant, where was Thomas Madigan placed under arrest and charges made? A. He certainly must have been placed under arrest at the Boulevard Headquarters.

Q. Was the charge made in your headquarters? A. Yes, they told me he was charged with manslaughter.

(Witness excused.)

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Commissioner Meister: Congressman, could I ask how many witnesses you have? I was going to suggest that due to Commissioner Chapman being called away, and the only reason for holding this session at night was for the convenience of the young men that have made the accusations, that we could continue in the day time to meet the convenience of the remainder of the witnesses.

Mr. Benny: I would make no objection to one of the Commissioners being away. If we could finish it tonight I would be glad.

Chairman Kleffman: We will lay it over until tomorrow afternoon.

20

Mr. Benny: I don't want to appear insistent upon it.

Chairman Kleffman: Here is the way we feel. We would like to set the case over until tomorrow about two o'clock. I would like to have the full Board sitting.

Mr. Benny: Can you make that three instead of two?

Chairman Kleffman: Yes, we can.

30

Commissioner Meister: Have you any witnesses here who won't be able to be here tomorrow?

Mr. Benny: There are two witnesses I would like to have heard tonight, two policemen, who I would not want to call tomorrow. Their testimony will be short.

Chairman Kleffman: Very well, we will hear them and lay the rest over until tomorrow afternoon at three o'clock.

40

SAMUEL BAREND, sworn as a witness for the defendant.

Direct Examination by Mr. Benny:

Q. Officer, do you remember the night of September 28th last or the early morning of September 29th, the night that Lieutenant Broadhurst came over to your station? A. I do. 10

Q. What were you doing that night? A. I operate the auto patrol there, and when I do nothing else I operate the elevator, any work that is to be done around.

Q. Is there any way to get up and down from one floor to another without the elevator? A. We have a key at the desk there. We don't let anybody go up except with the man that runs the elevator. There is no door outside. 20

Q. So the only way is the elevator? A. Yes, sir,—the stairs but you have to have the key to get in.

Q. At or near the time Lieutenant Broadhurst went up with you in the elevator did you take some other persons up? A. I took up two young men.

Q. Do you remember who they were? A. One of the men was here. 30

Mr. Benny: Mr. Kirby, will you stand up?

(Mr. Kirby stands up.)

The Witness: That is one of the boys, but I don't remember the other boy's face.

Q. Were they together, Kirby and the other man? A. Yes.

Q. Did you take them up before or after you took Lieutenant Broadhurst up? A. I took them 40

up alone. One of them had a coat with him, and Lieutenant Broadhurst was talking to Lieutenant Lyng when I taken them up.

- Q. Tell what you know about it. A. I took them upstairs, and Lieutenant Lyng told me that they wanted to see the boys implicated in the accident.
- 10 They got all the boys out implicated in the accident, and there was a screen door behind the barred door, about three feet distant, and they were behind the screen door talking to these two young boys, and one complained about a pain in his side, so they asked him to lift his shirt up and had a look at it, and asked if he was treated by the Doctor. He said he was treated for his arm. He had his arm in a sling, and I said I will go down and see the Lieutenant and have an ambulance surgeon
- 20 come up and look at it; and I went down to notify Lieutenant Lyng that one of the men up there wanted medical attention, and he said all right, he would call up the hospital, and he called up the hospital, and Lieutenant Lyng said, "Take Lieutenant Broadhurst up. He has never been up here." And I said, I would take him up and show him the prisoners, and I went upstairs and took Lieutenant Broadhurst up alone, and Detective Dillon was standing right near the office door
- 30 there, and while these other two boys were conversing he went over and spoke to Dillon.

Q. Who went over and spoke to Dillon? A. Lieutenant Broadhurst. And I went downstairs again. I came up again and I went over and got in conversation. The conversation went on about the building.

- Q. With whom? A. With Lieutenant Broadhurst and also Detective Dillon. So they were taking a statement from a prisoner charged with
- 40 atrocious assault and battery, and they were

through taking the statements and Mr. Dever said, "Will you put this fellow back in the block?" And I said all right, and so I said to Lieutenant Broadhurst, "Take your gun off and I will take you in to show you the block." So I took him inside the block, and one of the boys said to me, "Is there a possible chance that the two of us can be doubled up in one cell?" And I said, "No, it is against the rules"; and I said, "You will get tired and there is only room for one to sleep in there and it could not be done." And so I went around and showed him the shower baths and one thing and another, and we came out and when Lieutenant Devers and Lieutenant Broadhurst and Detective Dillon and myself all went down together. Then Lieutenant Broadhurst came back with the two boys. 10

Q. Then Lieutenant Broadhurst did what? A. Came back to the station house with the two boys. They had gone out. Came back with coffee and sandwiches, and I said to the boys, "Do you want to go up there?" 20

Q. What two boys was that? A. The same two boys.

Q. Kirby and his friend? A. (No answer.)

Mr. Benny: Stand up again, Kirby.
(Kirby stands up.) 30

Q. Is that the boy? A. Yes, that is one of the boys. They came with coffee and I said, "Do you want to go up with them?" And I said, "I will take you up." And they had quite a package, three or four kinds. So he came down—

Q. You went up with him? A. Yes, and we come down and there was another lady there and a man came in and they also had coffee and sandwiches in for one of the other boys. 40

Q. When you went up with coffee and sandwiches with Kirby and his friend where was Lieutenant Broadhurst? A. He stayed downstairs.

Q. At any time when Lieutenant Broadhurst was upstairs or on the floor that he reached by taking the elevator with you was he in conversation
10 at any time with this boy who just stood up, Kirby, or his friend, or any of the boys in your presence?
A. Not in my presence; not while I was up there.

Cross Examination by Mr. Reich:

Q. Were you there all the time with these boys?
A. No, sir.

Q. So he could have conversed with them and you not know it? A. He could have conversed
20 with them and me not know it because I went down in the elevator.

Q. What time was this? A. It was after one o'clock.

Q. Is it customary for Lieutenants from the Boulevard Police Headquarters to go over there and pay visits when they bring prisoners over? A. It is a new station and it has been customary from
30 the time we opened it, when men haven't seen it from out of town or from some other department we generally take them through and show them through the building.

(Witness excused.)

DAVID DILLON, sworn.

Direct Examination by Mr. Benny:

Q. Lieutenant Dillon, do you remember the night that Mr. Broadhurst visited the Seventh Precinct
40 Station? A. Yes, sir.

Q. Early in the morning of the 29th of September? A. Yes, sir.

Q. Will you just tell the Commissioners here what you know about the Lieutenant's visits to the station house that night. A. My partner, Detective Dever, and I were up taking a statement from a prisoner and two young fellows came up.

10

Q. How many? A. Two, with the man running the elevator, and they were talking to the prisoners.

Q. Do you know those two young men? A. No, I don't believe I know them.

Mr. Benny: Kirby, will you stand up again, please?

(Kirby stands up.)

Q. That is Mr. Kirby standing up. Is that one of them? A. I wouldn't say for sure.

20

Q. All right, go ahead. A. And they were in talking to the prisoners at the door when a little while after Lieutenant Broadhurst came up. When I heard the door slam I looked around to see who was coming in and he walked over to me and said, "Hello Dave." And I stood talking there, and with that these two young fellows came over and spoke with us. So when we were through with our prisoners we suggested to the man to put them back in the cell, so the man that was going to put them back in the cell asked Lieutenant Broadhurst to take off his gun and he would show him through. So Lieutenant Broadhurst took off his gun and left it at the table, that is, the desk, and they went in, and when they went in I stood at the door looking at these four or five men talking, and a little while later Lieutenant Broadhurst and this policeman came out and Lieutenant Broadhurst came over and talked to me, and there was some talk of coffee and sandwiches, so the four or

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five of us went down in the elevator together; and that is the last I seen of him.

Cross Examination by Mr. Reich:

10 Q. You did not have any business with Broadhurst that night? A. No, sir, I went there to take a statement from a prisoner—just conversation.

Q. Did Lieutenant Broadhurst know you were upstairs? A. No, sir.

Q. Just an accidental meeting, was it? A. Yes, sir.

Q. Were you there all the time that Lieutenant Broadhurst was on the floor? A. Yes, sir.

Q. What time of night was that, Lieutenant? A. Well, between 1:15 and 1:30.

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(Witness excused.)

Chairman Kleffman: We will now adjourn until three o'clock tomorrow afternoon.

November 2nd, 1929.

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(Case continued pursuant to adjournment.)

Chairman Kleffman: The Commission will come to order and the Clerk will call the roll.

(Roll called by the Clerk.)

Chairman Kleffman: Proceed, gentlemen.

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JOSEPH M. KEATING, sworn as a witness for the defendant.

Direct Examination by Mr. Benny:

Q. Officer, do you remember coming on duty on the 28th of September this year at the Boulevard Police Headquarters about the middle of the night some time? A. Yes, sir.

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Q. About what time did you come on? A. About 11:45.

Q. Do you remember seeing Lieutenant Broadhurst there? A. Yes, sir.

Q. Just tell the Commissioners here what you know about his calling up on the telephone. A. Well I reported around 11:35 that night and when I went to the desk Lieutenant Hanley told me that they had a serious accident that night resulting in the death of two people, and I was back and forth at headquarters until 12:30, and I went in the back room and later on Lieutenant Broadhurst asked me for a telephone book and asked me to look up a telephone number and asked me to call it and I called it, and the woman answered the 'phone and said that Jack Feinberg was there and said he would call later. The woman said she would have him call later. So I went on with the rest of my work, and I believe Lieutenant Rabold called later and he called Lieutenant Broadhurst to the 'phone and after that Officer Bilek reported back and I assisted him in making his report, and everything was cleared out and I got done with my own work.

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Q. Previous to Lieutenant Broadhurst's call for Feinberg did you hear him or see him make other calls there? A. Yes, he went to the 'phone twice at least that I can remember.

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Q. Do you remember who he called? A. No, I couldn't say because I was in and out.

Cross Examination by Mr. Reich:

Q. Office Keating, you came on at 11:45? A. Around that time; it might have been 11:48.

Q. Were the prisoners still there? A. Yes, sir, they were. Of course I couldn't tell one from the other.

Q. Did I understand you to say that you looked up Jack Feinberg's number? A. Yes, sir.

Q. At whose request did you look it up? A. Lieutenant Broadhurst's.

Q. Did anybody else at headquarters tell you about getting Jack Feinberg? A. No, sir, they didn't. Of course I was from one room to another, and sometimes Lieutenant Broadhurst asked me to call any number different nights.

Q. This time that you called up, in answer to your call did Mr. Feinberg get on the telephone? A. What?

Q. Did Mr. Feinberg answer the 'phone? A. No, not when I called.

Q. Did you hang up the receiver when you found out he wasn't there? A. Yes.

Q. When you speak of having heard Lieutenant Broadhurst having made other calls how close to the call that you made were the calls that Lieutenant Broadhurst made himself? A. I don't know, to the best of my recollection twenty minutes apart or something like that.

Q. A few minutes apart? A. No, fifteen or twenty minutes.

Q. Did you hear him call? A. No, I didn't hear him call. He was on the 'phone.

Q. How do you know he called? A. I saw him going out to the room and he was on the 'phone.

Joseph M. Keating—Re-direct Examination.

Q. He was on the 'phone? A. Yes, sir.

Q. You got there you say about 11:45 p. m.? A. Yes, sir.

Q. Did you call for the patrol or have anything to do with the calling for the patrol? A. No, I didn't,—Lieutenant Hanley.

Q. Lieutenant Hanley? A. Yes, he said they were waiting for the patrol wagon. 10

Q. And you got there at 11:45? A. About that time.

Q. How long after you got there did the patrol arrive? A. It must have been about thirty or thirty-five minutes—about twenty after twelve or twenty-five after twelve when the patrol arrived.

Re-direct Examination by Mr. Benny:

Q. Did you see Mr. Kirby and another man with him in police headquarters when you got there, Kirby being the friend of the men who were locked up? A. I don't recall; it was quite confusing there that night and there were several faces. 20

Re-cross Examination by Mr. Reich:

Q. You recall Mr. Kirby having testified here yesterday, do you not? A. Last night, yes, sir.

Q. And that is the man you have in mind? Mr. Kirby isn't here just now. Did you see him at headquarters? A. I don't remember seeing him when I first arrived. 30

Q. Do you recall seeing him afterwards? A. Afterwards.

Re-direct Examination by Mr. Benny:

Q. Where were he and his friends in the room when you saw him? Were they in the front room 40

or back room or at the desk or where? A. In the back room.

Q. Is the telephone in the back room or front room? A. Front room.

Q. Were those two young men present in the front room when Lieutenant Broadhurst 'phoned?

10 A. Yes. Later on when Lieutenant Rabold called them to the 'phone they were.

Q. When Lieutenant Rabold called them to the 'phone? A. Called Lieutenant Broadhurst to the 'phone.

Q. And they were in the front room then? A. Yes, sir.

Q. Did anybody call them in the room? A. I couldn't tell you that.

20 Chairman Kleffman: You are sure about that time that the patrol wagon arrived there, at 11:20?

The Witness: In the neighborhood of that time.

(Witness excused.)

30 JOSEPH HINES, sworn as a witness for the defendant.

Direct Examination by Mr. Benny:

Q. Patrolman, were you in headquarters the 28th of September of this year about the middle of the night? A. No, sir, it was after 12:30. It was the morning of the 29th.

Q. You got in headquarters about 12:30? A. About 12:40.

40 Q. Did you see Lieutenant Broadhurst there when you got there? A. Yes, sir.

Q. Where was he? A. Why just walking from the back room to the front room.

Q. Did you see the two friends of the boys who were locked up, Mr. Kirby being one of them, and another man? A. I see two men there in plain clothes; I don't know who they were.

Q. Where were they, in the front room or back room? A. Back room. 10

Q. How long did you stay there? A. I just came in and reported off my regular post, and I went right out on my regular post.

Mr. Benny: That is all.

Mr. Reich: No questions.

(Witness excused.)

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CHARLES V. KELTY, sworn as a witness for the defendant.

Direct Examination by Mr. Benny:

Q. Patrolman Kelty, were you present in Boulevard Police Headquarters the night of the 28th of September or early in the morning of the 29th? A. Yes, sir. 30

Q. Did you have anything to do with getting a patrol wagon to come there for the four people detained in the accident? A. Yes, sir.

Q. Just tell the Commissioners what you did or what you had to do with that? What did you do? A. From the start?

Q. Yes, just tell what you know about it. A. About 9:20 in the evening a 'phone call came in stating there was an accident at North Street and the Boulevard, and Lieutenant Hanley told me to 40

get things ready, that it was a very serious accident, involving four or five different people. So I proceeded to get the typewriter out and the statement sheets. About 9:25 or thereabouts Officer Gleason came to headquarters with four gentlemen who I found out later on were in a Ford car that
10 was involved in the accident at North Street, and a few other folks came into headquarters too. This gentleman, Thomas Madigan, the driver of the Ford car, was very nervous and upset over the whole proceedings. We had to clear the room out to get practically the four men that were riding in the Ford car alone so that we could take their statements without anybody else in the room hearing it, because when you have other people in the room they start arguing and it is hard to complete the state-
20 ments. I took Thomas Madigan's statement. I believe it took me about an hour or an hour and a quarter, or about that time, in order to take his statement, due to the fact that the man was upset over the whole proceedings. While taking the statement about ten or ten-five Patrolman Bilek came to headquarters and brought a woman with him and another man. Lieutenant Hanley immediately took the woman into the front office and proceeded to take a statement from her. I took a statement from
30 Thomas Madigan, which consumed at least an hour to an hour and a quarter. Lieutenant Thomas Broadhurst came in a little before Patrolman Bilek, and he in turn asked me who the witnesses were and to single them out. I immediately showed him the four men that were in the Ford car. He sat down in turn and took three statements and I took one statement from Thomas Madigan, and then I took another statement from another man that was in a car following the car where the two people were
40 killed. They were in one party at the time, all proceeding to the Stanley Theater, so I understand.

After I had finished taking the statements, which run up to say twenty to twenty-five after ten—I would say ten thirty—Officer Cox came into headquarters with a driver who was driving a car. At that time I thought he was under the influence of liquor, and my time, from the time I started to take Thomas Madigan's statement up until I finished taking his statement, show near half past ten. I had to stop probably every three or four minutes with Thomas Madigan due to the fact that the boy was upset and it was the first accident he ever had, especially involving a death, and then I had other routine office work, such as answering the 'phone, helping Lieutenant Hanley, who was in the other room taking statements. While I was taking the statement Lieutenant Thomas Broadhurst was also taking statements from the other three men, all involved in the Ford car. When the drunken driver came in Lieutenant Thomas Hanley asked me to call the doctor. I immediately got in touch with Dr. McDonald, who came to headquarters; and in all procedures where we have a man to be examined for driving a car under the influence of liquor, where the Doctor is to examine them, we clear the room. Therefore I took the four occupants of the Ford car and took them into the rear room in the back of headquarters and asked them to sit there until we got through examining this man that was driving the car under the influence of liquor. In the meantime, I figure about 10:25, Chief Clossey came to headquarters. I understand that he was to the show, to the State Theater, next door, this moving picture show, and came in upon the scene of the activities at headquarters at the time; and he asked a few questions inquiring about the men here and we told him that there had been a serious accident up at North Street. I believe it was about 10:50

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- to 10:55 when we cleared up the drunken driver, and then I took a statement from this other occupant of the car that was preceding the car where the two people were killed. In my judgment it was about 11:15 when we got through and I believe Lieutenant Broadhurst at the time had already
- 10 completed his three statements, and I took such statements and brought them up before Lieutenant Hanley at the desk, and Lieutenant Broadhurst said to me, "Call the wagon." I believe that was about 11:20. I called the Sixth Precinct and they told me that the wagon was out and they would send it over immediately upon its return to the Sixth Precinct. My time from then on was occupied in routine work. It was the midnight tour to go out and there was a roll call sheet to be made up. I
- 20 believe it was about 11:40 when Lieutenant Hanley told me to call for the wagon again. On the second call—I remember distinctly the man that answered the 'phone said, "The wagon is still out and we will send it over to you. Hold your shirt on." And that is all I know. From then on I was kept busy getting the statements together to turn them over to the Lieutenant at the desk, and at 11:50 to my knowledge Bilek proceeded to leave headquarters in the patrol wagon to take the prisoners to the
- 30 Sixth Precinct. At twelve o'clock my relief came in. Before that I did not pay much attention to what time they came in on account of the confusion, and I left headquarters at 12:05 and went home.

Cross Examination by Mr. Reich:

- Q. What time did you get through taking all these statements? A. Well, we were interrupted at 10:30 on account of the drunken driver being brought in, which necessitated calling for the
- 40 Doctor.

Q. Before putting these four men in the rear room that you speak of, did you call for the wagon?

A. No, not at that time, because at that time I was busy getting the doctor for the drunken driver.

Q. While you were calling for the Doctor why didn't you stay and call for the wagon? You were all through with these men, weren't you? A. No, 10
I had another statement to take.

Q. Then you weren't cleared up with all the statements at 10:30? A. No.

Q. What was being done from 9:10 to 10:30, which is an hour and twenty minutes? A. Well, if you were there at the time and seen the condition of Thomas Madigan and the time we consumed with him, which was an hour and a quarter, I would say the man was in a serious condition, the first time the man was ever involved in an accident 20
involving a death.

Q. His statement took all that time? A. Yes, sir, it could have been taken in twenty minutes if we continued right through with it, but due to the fact that the man asked for a drink of water every few minutes and asked for time—

Q. Were you in the office when Lieutenant Broadhurst was calling? A. Calling who?

Q. Calling anybody? A. No.

Q. Were you around there all the time? A. 30
Until 12:05.

Q. How many calls did you hear Mr. Broadhurst make? A. I didn't hear Lieutenant Broadhurst use the 'phone at all or make any calls.

Q. You heard it testified to, did you not, that Officer Keating put in a call for Lieutenant Broadhurst, that Lieutenant Broadhurst called me, called Ezra Nolan, called Mr. Feinberg. Did you hear any of these calls? A. No, sir.

Q. Were you in a position where you could have 40

heard it had you been there? A. That all depends on the time when they called. If all these calls were before twelve o'clock naturally my attention being on these other matters and going in and out I would see somebody at the 'phone.

10 Q. And you didn't see anybody? A. I didn't see anybody.

Q. You called for the patrol wagon on different occasions? A. Yes, sir.

Q. How long is the run up from the Sixth Precinct to Headquarters when you call for a patrol wagon? A. It varies.

Q. What is the best time they ever came in? A. Well, five to six or seven minutes.

20 Q. And prior to this occasion what was the longest time you had to wait? A. That I couldn't say.

Q. But to wait thirty or forty minutes is more or less unusual, is it not? A. It is to a certain extent, provided—let me explain it so you can understand what I mean.

30 Q. All right, go ahead. A. At the time we sent in the first call the wagon, I understand, was out, and the second time when it came to headquarters which was 11:50, I don't know what delayed them. I don't know anything about their physical contact in the Sixth Precinct.

Q. You heard it testified, did you not, Officer, last evening, that the patrol at 11:10 was sent on a call to Nelson Avenue? A. Yes, sir.

Q. You are familiar with that neighborhood and you know the distance, do you not? A. Yes, sir.

40 Q. Under reasonable circumstances is it your opinion, knowing the speed of an automobile, the distance covered, that it should have taken from 11:10 until the second time you called for this patrol wagon to some down to headquarters? A.

Then again you know when a man goes from the Sixth Precinct in a car naturally he can cover the distance in five or six or seven minutes, but that doesn't say that when he arrived there—probably the nature of the business—maybe he would be there ten or fifteen minutes, or sometimes half an hour.

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Q. The book at the Sixth Precinct shows that the call at 11:45 from Boulevard Headquarters to the Sixth Precinct for the wagon—that is about the approximate time, is it, that they called?

Mr. Benny: No. My recollection is that the book showed that the 11:10 call came in and the wagon wasn't there and at 11:40 the wagon got back from Nelson Avenue and at 11:45 reached Boulevard Headquarters.

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Mr. Reich: If the Commissioners please, my recollection of the testimony is quite different from that. There was a call noted in the book at 11:10 for the wagon from the Sixth Precinct to go to Nelson Avenue. I think the testimony will bear that out. The next call for the wagon is 11:45 going to the Boulevard Police Headquarters. The intervening time is not noted on the record. I am not claiming it to be noted on the record. The fact remains that the police record of the Boulevard Police Department shows the wagon leaving the Boulevard Police Headquarters at 11:50, which would bear out the contention that the 11:45 call was properly noted in the Sixth Precinct, and prior to that time the 11:10 call that counsel refers to is the call testified to by Lieutenant Lynch as going to Nelson Avenue.

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Chairman Kleffman: We have got to get down to the exact time of these things, so we will allow the question.

10 Mr. Benny: The book is the best evidence and it is not here. It was here last night and the wagon took the book away, and it ought to be here today. They should have brought it back.

Mr. Reich: The testimony is in. I am not going to argue about it.

Chairman Kleffman: Go along with the questioning.

Mr. Reich: I withdraw the question.

Re-direct Examination by Mr. Benny:

20 Q. I understood you to say you were relieved from duty about 12:05? A. Yes.

Q. Who relieved you? A. Patrolman Keating.

Q. And you left the place immediately? A. Yes, sir.

Q. And therefore it would be impossible for you to hear anything Keating did after you left? A. Yes, sir.

30 Commissioner Chapman: Officer Kelty, when you make statements do you generally sit in the front room or back room?

The Witness: In the back room.

Mr. Benny: Had the prisoners or witnesses, whatever you may call them, gone to the Sixth Precinct Police Station before you had gone off duty?

The Witness: Yes, sir, Bilek left headquarters at 11:50 to proceed to the Sixth Precinct.

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(Witness excused.)

WALTER E. BILEK, sworn.

Direct Examination by Mr. Benny :

Q. Officer, will you tell what you know about the affairs on the night of this accident on the 28th of September? A. I was at the corner of Zabriskie Street and the Boulevard at about 9:05 and I heard a crash and somebody hollering, "There is an accident up the road," and I went north.

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My post went to Grand Street and a block further on I seen this accident, and just then a car started down the Boulevard with a Jersey City Patrolman on the side of the car, and I rode alongside of him and I said, "What is the matter?" And he said, "Give me the right of way down," and he said, "There is a serious accident there"; so I proceeded with him to the Jersey City Hospital and arrived with him there in about five or six minutes, and we brought the patient which was in the car—she happened to be the girl—in the hospital on a stretcher. There were a couple of other men in the car. About five or ten minutes after that another car came down with another man in the car, also injured, and I went out and gave them a hand to bring him in. He was taken inside and examined by the doctors and a little while later the ambulance came back and had a girl in it, and I believe her name was Miexsell, and she also had been injured; and I stayed around the Jersey City Hospital practically an hour; and they examined them and pronounced one girl dead and I went to get information who the doctor was that examined them and the condition of the other patients that were there and get information of the other patients there to bring to headquarters, and it took an hour or longer, and they brought this other fellow up-

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stairs, they said in a serious condition, and I went up to the ward to find out from the doctor just how he was, what condition he was in, and they said they would 'phone headquarters if anything happened to him. I then went down below again and Patrolman Lenahan was there then and he helped
10 me gather up all the witnesses. I took the Miexsell girl and I believe one other fellow to headquarters and left the rest of them with him to bring over. When I got to headquarters I put them out in the little hall right in front of the desk. Both doors were closed, one leading to the desk and one to the reserve room, and I went into the reserve room and seen Lieutenant Broadhurst taking statements and Lieutenant Kelty and I went into the front office and they had the witness there; and I said, "This
20 girl is in kind of a bad shape; she is pretty nervous and her side hurts her and her hip. I think you should take her statement first and let her get home and get her own doctor to look her over again." I said, "It was just a temporary examination over there"; and he said, "All right, bring her in," and I brought her in the front room, and he said, "Stay outside there and watch the rest of the witnesses and see that none of them leave before statements are taken," so I waited out in the hall and there
30 was quite a lot of confusion out there and I went back in the reserve room and asked Lieutenant Broadhurst if I could take my coat off. It was quite warm and I had been sweating from riding and I didn't want to catch cold. And he told me it was all right, "Go back out there and watch them witnesses," and he proceeded at the end of the table taking statements, and Kelty was sitting about six or seven feet away from him also taking statements, and between that I was running in and out on the
40 different work, bringing witnesses in to Lieutenant

Hanley and they, and about 10:45 or eleven o'clock I should judge, somewhere in that vicinity, Patrolman Cox came in with a man and he said, "What is going on?" And I explained to him and he said, "You had better wait and see what they want to do with this fellow"; and I brought him in, and to the best of my recollection Lieutenant Broadhurst said, "Sit him down and go back to your post," on account of so many other men being away from their posts on account of this accident; and about eleven o'clock the statements were taken and Chief Clossey came up and asked me about it, and I explained to him and I went in the side room again and the men had been taken in the back room and Dr. McDonald came up and while he was out in the hall this boy Lang had complained about his wrist and I said, "You were over at the hospital, weren't you? Why didn't you let me have you examined? You refused medical examination over there." So I explained it to the Chief who was standing there and he told me when Dr. McDonald got through with looking after the drunk driver to look it over. So they cleared that up and held the car I believe and the driver, and we brought this Lang in the side room and Dr. McDonald looked it over and said he had probably a possible fracture of the wrist and couldn't tell without an X-ray picture. So the Chief and I walked in the front room with the rest of them and he asked to see the statements Lieutenant Broadhurst had just handed me, and I had separated them. I had five statements, the two Madigan boys, Dulligan and Connors and Lang, who were to be held in one place, and the rest of the witnesses separated; so when we went up to the Sixth Precinct to book them we took the statements to show the Lieutenant if he wanted to see them. At that time a reporter came in and the

Chief was standing at the railing at the front desk and he asked about the accident and the Chief turned to me and he said, "Bilek, give him what dope you have on it"; and I went in the side room again and gave him all the information I had—and in fact, there were two or three reporters there then, and I had all the information and they were all coming to me for it, and I was quite busy, and then I asked Lieutenant Broadhurst what should be done with the car, and he said, "Will it have to be towed away?" And I said, "No, I think it can be run." And he said, "Get Patrolman Schechtle downstairs and have it taken to the garage"; and I went back upstairs again and Dr. McDonald was leaving and he had left a package of prescription papers and a fountain pen up in headquarters, and I went down with them and ran after him and ran up the street about fifty or one hundred feet and returned them to him, and then I came back and the Chief was still standing there, and we went over to look in the car to see what was in the car, and Patrolman Schechtle went away with the car, and I went upstairs again. Before I went downstairs to tell Patrolman Schechtle I came back up and said, "Well, is everything all set for the wagon? Is the wagon on the way?" And they said no, "It is out," and then I waited around and walked in the back room to see if the prisoners were all right and waited around a little while and Lieutenant Broadhurst told me to get Madigan out, that he wanted to see him. I brought him in front of the desk and he explained to him he was about to be held on a charge of manslaughter and that his three friends and Lang were to be held as material witnesses and that they were to be booked at the Sixth Precinct. He said that the bail, as usual, will be \$2,500 for the manslaughter charge and that the others would

be \$500 apiece. With that another reporter came in and said that the other occupant of the car had died, the man, so I said to Lieutenant Broadhurst then, "Do you think they will raise it on account of being a double charge?" And he said, "No, not necessarily." He thought the one would stand. I took them back in the back room again and waited around for the patrol wagon and finally the patrol wagon came, and the patrol driver came upstairs. We explained to him what we had, and I said, "There is one fellow here has got a bad wrist; suppose we run him over to the hospital first and have him examined and get him patched up. He will probably be in all night." And he said, "All right; anything you say I am with you." And so we put him in the wagon and I sat in the back with the five boys and one of the boys was complaining it was quite cold. He had loaned his coat to a friend of his. I said it was quite a foolish thing to do on account of the patrol wagon being open and I said he is liable to catch cold if he didn't watch himself. And we went on over to the hospital and Dr. Jaffe examined Lang and sat him down in a chair and put a splint on him and bandaged him all up, and I guess we were there three-quarters of an hour, and from there we rode up to the Sixth Precinct and they were arraigned there before Lieutenant Lynch, and we were there about ten minutes, and just before we left a man and woman were brought in by another patrolman, and this man had been beating his wife or something and had cut his head and leg. Lynch said, "You had better take him along with you and take him to the hospital and get him patched up"; and on the way down I asked the patrol driver if they would mind taking me down to headquarters, that I had to make out that report before I went home. We arrived down at

headquarters I judge about one o'clock we went up and there were still a couple of reporters looking for information, and Lieutenant Rabold said I could give them the information. They were all wanting information concerning the accident, and I answered the 'phone and I gave them what reports I had and what it was all about, and I went back in the room and I myself was pretty well tired and worked up at the time, and all the excitement, and I asked Patrolman Keating if he would mind typing the report for me as I read it off, to save me a little time so I could get home, and he sat down at the typewriter and I read my report off to him, and when he was finishing my report I was ready to go home and I walked in front and reported off to Lieutenant Raybold and he looked at the clock and said, "It is 1:40, and I will mark it in the blotter, 1:40."

Q. You spoke of the boys being booked in the Sixth Precinct Station house. What do you mean by that? A. They were brought there and entered in the blotter by the Lieutenant, seeing as we had not any place to book them in our headquarters. Whatever precinct the accident happened in they are arraigned there, and the Lieutenant books them.

30 Q. Was there a charge made against anybody there? A. Yes, sir, I made a charge of manslaughter against Thomas Madigan and a material witness charge against the other four.

Q. That was in the Sixth Precinct Station House? A. Yes, sir.

Q. On the way over to the Sixth Precinct Station House did you have any talk with any of the boys or did they have any talk with you or any of them make any observations or statement about a lawyer? A. Well, we were sitting in there con-

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versing and talking over different things and Madigan said to me—

Q. Which Madigan? A. Thomas Madigan. He said to me, "I guess we are in an awful fix." And I said, "I believe you are because I was in the same fix myself about five or six years ago, and," I said, "It cost me quite a bit of money and I wasn't any more at fault than you are." And he said to me, "What would you advise me to do?" And I said, "The only thing you can do is to get counsel"; and he said, "Do you know of anybody?" And I said, "No, I don't offhand." And I said, "Further, I couldn't recommend counsel to you anyhow. I have no business too." And he said, "We have got to get hold of somebody"; and I said, "Get hold of a 'phone book; run through the 'phone book and find one and call him up." 10

Q. The other boys, the witnesses, were there in the wagon with you? A. Yes, sir. 20

Q. Taking part in the conversation? A. Yes, sir.

Q. Did any one of those witnesses have anything to say about a lawyer or bond or anything? A. No, sir.

Cross Examination by Mr. Reich:

Q. You are not up on charges of having gotten anybody, are you? A. I don't imagine so, so far. 30

Q. When the Chief was speaking to you about getting the statements together, what time was this? A. I should judge it was around 11:10 or 11:15, somewhere around that time.

Q. So far if, as has been testified previously, the Chief didn't leave there at 10:30, that isn't so? A. I don't imagine he did leave at 10:30 because he was downstairs when Patrolman Schechtle took the patrol wagon and when Dr. McDonald went away. 40

Q. Was the Chief there when the drunken driver was brought in? A. It was just about the time the drunken driver was brought in.

Q. These statements as far as you know were all completed and you got them altogether from Lieutenant Hanley at approximately eleven o'clock, did you? A. No, I wouldn't say that.

Q. What time? A. About 11:30.

Chairman Kleffman: Pardon me. Are you sure of that time, 11:30?

The Witness: Yes, sir.

Q. Officer Kelty, who was just on the stand before you, stated that all the statements except the statement of a man named Lang were completed at 10:30. A. No, sir, they weren't, because in the back room—Lang's statement had been taken in the front room along with the Miexsell girl's statement, along with a man named Thiebob, or something like that, and in the back room after the Madigan boys' statements and Dulligan's and Connor's statements had been taken there was a man named Park whose statement was taken and a man by the name of Kuch, or something like that, and Lieutenant Broadhurst took Kuch's statement and—

Q. You were in and out more or less that night, were you not? A. Yes, sir.

Q. And this accident occurred on your post? A. This accident occurred a block off my post, or practically on my post, yes, sir.

Q. And were you listed as the arresting officer on this case? A. Yes, sir.

Q. When was it that these men were talking to you about getting a lawyer or you saying that they ought to have counsel or should have counsel, or

whatever it was—when did a lawyer enter into these proceedings? A. After we had left the hospital going to the Sixth Precinct. We were going up Baldwin Avenue.

Q. You were here last night, were you not? A. Yes, sir.

Q. Were you in headquarters at the time the calls left headquarters whereby either Lieutenant Broadhurst or anybody else in headquarters was talking to any lawyer or calling anyone on the 'phone? A. No, sir. 10

Q. Did you hear any remark in headquarters about getting hold of a lawyer? A. No, sir, I did not.

Q. Were you there at ten o'clock in headquarters? A. About ten or ten fifteen.

Q. And you stayed how long? A. I stayed there until I took them from headquarters, which was approximately twelve o'clock. 20

Q. From ten until twelve o'clock you never heard anything about getting a lawyer? A. No, sir.

Q. You heard Lieutenant Broadhurst testify that he did talk to Mr. Feinberg and that while he was talking to Mr. Feinberg, Mr. Kirby—you recall who Kirby was? A. Yes, sir.

Q. Was standing there with him? A. That I don't know. 30

Q. You don't know. You can hear, can you not? In the rear room from the front room? A. Providing the door is not closed, and three quarters of the time it was closed on account of taking statements in the front room and in the back room, and the three doors leading off into the corridor were also closed while they were taking statements.

Q. Did you know on that Saturday night before you checked out at 1:40 that arrangements had 40

been made for these men to see counsel, of any kind? A. No, sir.

Q. They didn't mention it to you, did they? A. In fact the only thing I know of counsel being mentioned was when we were riding up in the patrol wagon and I told them I didn't know of any and couldn't recommend any and the only thing he could do was to get a telephone book and look up someone.

Q. What time were you riding to the hospital? A. I mean when we were taking to be booked at the Sixth Precinct.

Q. When? A. After we left our headquarters we drove directly to the City Hospital.

Q. And that was after twelve o'clock? A. Yes, sir.

20 Q. And at that time they were asking you the name of somebody to get? A. No, they were asking me that after we had left the hospital driving to the Sixth Precinct. There was only one man that did ask me that and that was Thomas Madigan, who was sitting alongside of me in the patrol wagon.

Q. Did you see Kirby when he came down with his athletic shirt on? A. I seen Kirby but at that time I didn't know who it was, whether it was 30 Kirby or anybody else.

Q. Did you see him when he came back with a collar and tie on and was dressed? A. No. I did not.

Q. Did you see him talking to Lieutenant Broadhurst at all? A. No, I did not.

Q. How many times did you hear the wagon called for? A. I didn't hear it called for either time, but I was told that he was called twice by Patrolman Kelty.

Re-direct Examination by Mr. Benny:

Q. Do you know who drove the patrol wagon, who was here at the front door last night? A. In front of the door?

Q. Yes. A. When we were taking the books down? 10

Q. Yes. A. That was the Sixth Precinct Patrol, but I don't know who the driver was.

Mr. Benny: Is the officer here who drove that wagon here last night?

The Witness: No, sir.

(Witness excused.)

JACK FEINBERG, sworn as a witness for the 20
defendant.

Direct Examination by Mr. Benny:

Q. What do you know about this matter? A. I left the State Theater on Saturday night I think in the neighborhood of about twenty minutes of twelve and I got home, undressed and went in to take a shower, and I remember the bell ringing when I was in the bathroom, and when I came out Mrs. Feinberg said it was a call from Lieutenant Broadhurst and I called back and I asked for him and somebody else answered the 'phone and they put Lieutenant Broadhurst on and I said, "Did you call me?" And he said, "Yes, there are a couple of fellows down here and they want some help; they want to get a fellow out to get home tonight"; and he said, "Wait a minute, they want to speak to you"; and I waited a minute and he said, "He don't want to talk now"; he said, "He wants you to come 30 40

down now. Will you come down to see him?" And I said, "No, I won't come down to see anybody at this hour. It is no question of life and death." And I said, "Well, if they are in jail at headquarters it won't hurt them to be in a couple of hours longer"; and I said, "Tell him I will be down in the morning." And he said, "This fellow hasn't got a car. Will you meet him?" And I said, "I will be in my office, at ten o'clock." I was preparing a brief in a case before the Supreme Court and I was going to consult with another lawyer at my office, and I said, "Tell him I will be at his house at 9:15 and I will have to be back at the office at ten." And the next morning about 9:15 or half past nine I went down to Mr. Kirby's house. His name and address were left with me over the 'phone. I forget the name of the street. It is near the vicinity of this accident on North Street and the Boulevard; and I met him and he came out with another young man who was introduced to me as Mr. McGill, I think was the name, and I took them down to my office and I called up this lawyer I was to meet, and then they told me the facts of the case, explained to me that there was to be a party at his house that night and that these young men had come over from Long Island, and McGill who was to come there with them missed them and he came on over without the car and went to Kirby's house and waited there, and while they waited they had information that they were in a serious accident wherein the car in which his friend, who it subsequently developed to be Thomas Madigan, was driving and the other car collided at the Boulevard and North Street and one man and one woman in the other car were killed, and there was some question about life and death of a third party; and after they had explained the whole thing to me I then took them over to my

brother's house. I knew the first procedure was to get in touch with a Common Pleas Judge to have bail fixed on the manslaughter charge, and Jesse called up Judge Kinhead and Judge Kinhead fixed the bail at \$2,500 for Tom Madigan and \$500 for the three material witnesses, each. Every one of those young men lived out of the State, in New York,—Long Island—and after that was arranged I then took them in—Kirby and his friend—put them in the car and drove them to the Seventh Precinct. I told the Lieutenant at the desk there that I had come down to bail out these four young men; that this young man had engaged me to represent them and I would like to get in touch with somebody who would take the bail, and I then got in touch with one of the County Clerk's; I think it was Eddie Smith of Judge O'Regan's Court, and he came down in about three-quarters of an hour, and in the meantime Judge Markley was there and I said, "Hello Judge", and he said, "Hello Jack"; and when Eddie Smith came the bail was arranged and in the meantime I talked to these young men. They let me speak to them. They put me in the rear where there is a big long brass rail and the Lieutenant sent one of the officers up, and we talked in the back room about the thing, and I then said to them, "If you want me to handle this case all the way through it will cost you, if there is an indictment and you have to go to trial, it will cost you more," and they were satisfied; there was no question about that.

Q. Who became the bondsman? A. I did. I put the bail up there for them. I asked them if they could get anybody to put bail up for them and they said no. They had no property in New Jersey, and Kirby said he had just been married and I said, "I will take a chance with you"; and he said, all their

lives they had been pals and had been together there so many years, and I took a chance on them and I put up \$4,000 bail that morning for their appearance the following morning. I am a little ahead of my story. When we were down at my brother's house in Bayonne I then said to Kirby,—he said, 10 "What will this thing cost?" And I said, "It will cost you \$750", and he said, "I haven't got any money now but I have got a bank book with me but I won't be able to pay you until tomorrow"; and I said all right, if you are perfectly willing to advance it for the other boys and pay it yourself", and he said, "That is all right with me"; and then I drew up a memorandum and he signed it and his friend McGill signed it, and it reads like this, "I hereby agree to retain Feinberg & Feinberg as counsel for Thomas Madigan, William Madigan, James Eiligan and Edward Connors, on charge of manslaughter against Thomas Madigan, and to pay said Feinberg & Feinberg the sum of \$750.00 as their fee for their services in said matter, and hereby assign said sum of \$750 out of my bank account No. 336063 in the New York Savings Bank, and agree to pay said sum on Sept. 29th, 1929." After that was signed—

Q. What date does that bear? A. It is not dated. 30 It was the 28th.

Q. The 28th was Saturday; the 29th was Sunday. A. Anyway he agreed to pay it on that day; and after talking awhile he said he wouldn't be able to get the money until he went to the bank the next day.

Q. Was that signed on Sunday? A. This was signed on Sunday in my brother's house, and I drew this up. Do you want it marked?

Mr. Benny: Yes.
40 (Marked Exhibit D-3 for identification.)

Q. Then on the following day, Monday, what took place? A. Before we get to the following day,—Kirby then called me aside and said, "If I am going to pay you this money I want you to make some arrangement so I can get some money back from these four fellows. While they are friends of mine I want you to protect me so I can get that money back." And I said, all right, and he said, "Will you meet me tomorrow at the bank on 14th Street?" I forget what bank it was on 14th Street—14th Street and Seventh or Eighth Avenue; and he said, "I will give you this money"; and I said all right. I had to be in New York at 11:30 anyhow. The following morning Kirby then agreed that he would not meet me in Jersey City—so the following morning I came down before Judge Markley and I waited about an hour before the case was called and then waited for the Grand Jury, and the boys had to wait again. The bail I had put up was only for the one day, and I again had to ring up Judge Kinkead and again had to fix the same bail, and then I had to call up Smith, the Clerk, and he agreed he would be back the following day and bail them out, and he said he was tied up in Judge O'Regan's court and I had to wait for him; and I said, "Will you wait until one o'clock?" And I went to New York and stopped at 46th Street and Sixth Avenue and from there I went down to the bank and met Kirby. He came in and brought the bank book to the teller and after the teller looked at it he called me over and told me the teller wanted to talk to me, and the teller said, "If you want to wait until tomorrow he will get eight dollars more interest." And Kirby said "what do you say about?" And I said, "It is up to yourself. If you are going to pay this money for them—it is not my money; it is your own." And he said, "If you will have them sign this paper—

I want those boys out—I don't want you to fall down on the job; I don't care about anything else; I want them out." So he then got the money and counted the money and while he was counting the money I drew up the receipt which was in evidence here and which reads as follows: Received of
10 James Kirby the sum of \$750 as fee in re State of New Jersey versus Thomas Madigan. Charge, manslaughter." Which was signed Feinberg and Feinberg by Jack Feinberg and dated September 30, 1929. And you will note that it says "as fee." He read it and after reading it he then gave me the money and shook hands and said, "Take care of them right away and take care of that statement." And I said, "I will do that."

Q. Did you do that? A. And then I went back
20 down to the Seventh Precinct and I had to wait about three-quarters of an hour before Smith came. I had to wait down with these boys about an hour, and I remember we read the New York papers about this accident. It was on the front page, and about a little girl that was killed. And we waited there about an hour and Smith came and then I bailed them out, and in the meantime I told the boys, "You ought to do something to protect your friend Kirby, who was good enough to advance the money for you",
30 and at that they said, "Anything he wants done we will do"; and they said, "He was white with us"; and I drew up an agreement while there in headquarters.

Q. In the Seventh Precinct? A. Yes. And it is dated September 30th, I think that is the Monday, and they signed this agreement or acknowledgment, which reads as follows: "We hereby acknowledge that we are indebted to James Kirby in the sum of \$750 besides interest of \$8.53, which sum the said
40 James Kirby advanced as fee in re State of New

Jersey versus Thomas Madigan, charge, manslaughter, wherein William Madigan, Ed. Connors and James Dulligan are held as material witnesses.

“Thomas A. Madigan,
James P. Dulligan,
Edward J. Connors,
William Madigan.”

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And you will note that it says distinctly, “Money advanced as fee.” Now after they signed that I said to them, “Now you fellows make your own arrangements about taking care of him.” And I said, “If I hear anything from either the Grand Jury or the Prosecutor’s Office I will let you know, because I am on your bond. I put up \$8,000 for your bail today, and in doing it,” I said, “I am making no charge for the bail; I am just accommodating you; I am not charging for this bail, and the \$750 is the fee”; which I put in this receipt and which they signed here and which they put in that other paper, and everything was O. K., hunkydory; and I never heard anything more from Kirby but I heard from Madigan. He called me one night. He and I became very friendly. He called me by my first name and I called him Tom, and he said, “Don’t you think that is a little high?” He tried to razz me to pay Kirby back, and I said, “Why don’t you run down to see me,” And that is the last I heard of the whole matter.

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Mr. Benny: I ask that this statement be marked for identification.

(Marked D-4 for identification.)

A. (Continuing) On Sunday after I had bailed the young men out I asked them where they were going and they said they wanted to go home and

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they wanted me to drive them to Journal Square, and they said their car was in the Tiger Garage; and I said, "In case there is an indictment I want to see what damage there is"; and I went to the Tiger Garage with the four young men, and the damage was to the front bumper and one of the
10 lamps, and I said, "I don't want anything on this car touched." I instructed the man that owned the garage,—“I want the physical condition of this car left just as it is”; and I said to Madigan, “I want you to get photographs of this car as it is,” because two people had been killed, and he said, “All right, I will take care of that.” And he said something about getting the car when he came in the next day and I said, “All right, I don't think you will have any trouble about that.” And that
20 is about as much as I know about this whole case.

Mr. Benny: That is all.

Cross Examinaiton by Mr. Reich:

Q. What time were you called, Jack? A. About half past twelve or in that neighborhood.

Q. And you made arrangements then to see him the next morning? A. Yes.

30 Q. You knew, of course, that Kirby wasn't a party to this accident? A. Certainly.

Q. You knew he was an outsider? A. Certainly which very often happens as between us lawyers.

Q. There was testimony here yesterday to the effect, somewhat along the lines that you said, “Well, if anybody speaks to you about me being in the case you tell them we are old friends and that we have done business before.” Was there any such talk as that? A. I think you yourself know that
40 isn't so.

Q. I wasn't there? A. You know me better than that.

Chairman Kleffman: Just answer the question.

The Witness: I have answered the question, Commissioner.

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Q. It isn't a usual procedure, is it, counsellor, to go to New York to collect a fee in a case of this kind? A. Under the circumstances of this case it was very usual. He didn't want to take a day off from work and I wanted to be paid before I went any further in the case. As a matter of fact I put up \$4,000 bail without getting a cent. I took a chance on the four young men for twenty-four hours.

Q. When you arranged on Sunday with Judge Kinkead for bail you had Kirby's bank book, did you not? A. No. 20

Q. When did you get the bank book? A. Not until I had called Judge Kinkead, or my brother had called Judge Kinkead.

Q. But you had this bank book? A. Yes, he gave me the bank book. He said, "Hold this."

Q. So your chance extended only to the sum of \$750. In other words, you had the bank book. A. No, my chance extended to the sum of \$4,000. 30

Q. But you had a bank book for \$756? A. Yes, but that was only my fee. I didn't charge anything for bail, Mr. Reich.

Q. Now Mr. Kirby testified that when the \$750 was turned over to you at the bank that you immediately left. Did you have anything to say to him at all afterwards? Did you have any conversation with him afterwards? A. Mr. Reich? A. I just gave you the story that when he got the money from the teller he went over to one of these little 40

desks where they have blotters and he then counted out the money and I picked up a sheet of paper at one of those little desks where they write out their deposit slips and I wrote out the receipt and he stood there while I wrote it, looking over my right shoulder, reading it as I was writing it and he read
10 it after I gave it to him, and after I gave him the receipt he then gave me the money and shook my hand. He had some kind of a truck outside and he said, "Take care of those boys." It was raining at the time. He got in the truck. He left ahead of me. He jumped in his truck and went away before I did. I waited for a taxi.

Q. You got the information from Lieutenant Broadhurst, did you not, Mr. Feinberg, that he was very anxious to get one of the boys out? That was
20 explained to you? A. Yes, that those two young men were there and that they wanted to get one of them home.

Q. And you knew that Kirby had \$750, did you not? A. I didn't know anything about it until the next morning. I didn't know whether he had seven cents or seven thousand dollars. I did not know anything about it until the following morning.

Q. You had no idea that you were ever going
30 to be paid? A. I had no idea of anything at all until I saw the young man. A lot of times these matters develop into money and a lot of times you don't even get the case.

Q. Did you have any conversation at all with Kirby in reference to what this \$750 was to cover?
A. Why of course I did. When he signed the agreement which I have just read he agreed to give me that as a fee. I most certainly did. And his friends signed the agreement that he gave it to
40 me as a fee and agreed to give it to me next day;

and he asked me as a favor not to have him come to Jersey City the next day and take a day off from work.

Q. Mr. Feinberg, knowing the facts of this case as you did, was this case serious? A. Well of course your question is highly improper in relation to this complaint against him.

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Q. I mean was this a serious case in your mind? A. Any manslaughter case is serious, especially where it is double manslaughter.

Q. You knew of course that it arose out of an accident? A. Oh, surely.

Q. And you had the facts from the police authorities as to how it did occur? A. Not all. I knew in the first place that there were four young men in wrong, strangers in New Jersey, and you know what that means to us lawyers, and they were going to a party, and you know how that spells out to a jury; and no manslaughter case is considered an easy case.

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Q. They weren't drunk. A. I didn't think they were drunk. I wasn't told any of them were drunk.

Q. They never got to the party they were going to? A. That was the information given to me.

Q. So they were passing through and had an accident that resulted fatally to two people, and they were charged with manslaughter, which attorneys generally know to mean—which is a technical term that they are to be held for investigation. That is all it amounted to, isn't it? A. I never knew any such thing to mean any such thing in any manslaughter case.

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Q. In your long practice, Mr. Feinberg, in Hudson County, how many indictments for manslaughter in similar cases have you ever heard of in Hudson County? A. About a dozen.

Q. Could you name me one? A. I can't name

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any of them. I couldn't even name the ones we had, and we had a couple in our office.

Q. They had extenuating circumstances, such as drunkenness, or circumstances which would make it manslaughter? A. I couldn't say that.

10 Q. But there were other circumstances? A. I wouldn't say that. It all depends on who was killed and what connections he had. Sometimes that helps.

20 Q. You were quite sure, Mr. Feinberg, that as far as any business relations that you had with Mr. Kirby or with these four men,—you are of the opinion that it was understood right from the beginning of this case that this \$750 which was turned over to you by Kirby was to be for a fee and that there was to be no possibility of understanding anything different? A. There is no doubt about it. Their understanding of English is as good as yours and mine and they read it and signed it on three different pieces of paper; and in fact on Sunday Dulligan, or some of them, said, "Don't you think this is a little high?" And Madigan said to me, "Don't pay any attention to him; he usually crabs anyway." There couldn't be any question about it.

30 Mr. Reich: That is all.

(Witness excused.)

Mr. Benny: We have subpoenaed Mr. Hays, who was present, and he is the man whom some of the boys testified about seeing a detective.

Is Mr. Hays in the room?

40 Commissioner Meister: There are some officers in the corridor.

(Mr. Hays called in the court room and in the corridor. No response.)

Defendant rests.

Chairman Kleffman: Is that all?

Mr. Reich: We have some rebuttal.

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Rebuttal.

JAMES KIRBY, recalled in rebuttal.

Direct Examination by Mr. Reich:

Q. Mr. Kirby, you were at headquarters on the night of this accident very shortly after the boys were first arrested, were you not? A. I was with them at the time they were arrested. 20

Q. You were with them and went down to headquarters? A. Yes.

Q. At that time you were not dressed? In other words, you had an athletic shirt on and so forth.

Mr. Benny: I am going to object on the ground this was all gone over last night. The witness was exhausted on the subject and excused, and therefore anything further along that line is improper. 30

Mr. Reich: This is proper. Of course what I am bringing out is repetition, but—

Chairman Kleffman: Go ahead.

Mr. Reich: Very well, I will withdraw the question. Never mind, Mr. Kirby.

(Witness excused.)

Mr. Reich: The Commission rests.

Mr. Benny: Who did you say rested?

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Mr. Reich: The Commission.

Mr. Benny: That is a funny one.

Mr. Reich: There is nothing funny about that.

10 Mr. Benny: Do I understand that the Commission before whom we are now having the case tried as Judges are also prosecutors and that now the prosecution, you Commissioners rest? All right.

Mr. Reich: You understand exactly what is meant, Mr. Benny, when I say the Commission rests. I am representing the County in this particular case and when I say "The Commissioners" it is the County that rests. It is the County that rests through the Chief.

Chairman Kleffman: We are to be the judges on this and there is no use of trying to put in a lot of things that are not necessary.

20 Mr. Benny: I am not trying to put anything over. I want you to get that out of your minds. You all heard the gentleman say, "The Commission rests," and it must have astonished you as much as it did me. I am not trying to put anything over.

Chairman Kleffman: I am not saying that you are trying to put anything over, but I don't want you to infer that we are the judges and the prosecutor at the same time.

30 Mr. Benny: I didn't think it possible. I heard what the man said in utter surprise.

Mr. Reich: If you were listening, Mr. Benny, I said the same thing when the Commission had their case in yesterday, exactly the same thing. As a branch of the County Government I feel that they are entitled to put in a case.

(Thereupon Mr. Benny summed up to the Commissioners.)

Thereupon Mr. Reich summed up to the Commission as follows:

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Mr. Reich: Gentlemen of the Commission, I have listened to Mr. Benny's summation of this case, and while it is apparent from the beginning that we did not quite agree on the record, and also on the charge. I am sorry for Mr. Benny's sake that the objection that was directed to the charge was not made in such time so as to preclude a lot of unnecessary testimony, and in the summation of this case I am not going to go into the question of the charge as presented or any of the objections which were directed to the charge. I am satisfied in my own mind that the charge need not necessarily coincide verbatim with the paragraphs that have been cited, and I will leave that as it stands. 10

The story that has been brought out before you gentlemen, and before this court, I take it to be this: I have tried to be fair in this case, and I have allowed, as has my opponent, testimony to go into the record which does not properly belong there. He has given me and I have given him all the latitude that could be gotten to present as thorough a case on behalf of the commission as he has on behalf of his client. Counsel for the defendant must appreciate that this is not a personal matter with me, nor the commission. These are charges that are brought, and if these charges do not stand, from the summary of the testimony that is in, I am quite sure that Counsellor Benny need have no scruples about the outcome. He has tried to show all that he has had at hand and we have done likewise. The story, in substance, as I take it, is this: 20 30

There was a serious and fatal accident at North Street on the night of September 28th, where four men were brought in. As is usual in cases of that kind Madigan, who was driving the automobile, was a prisoner from the time he left the scene of 40

- the accident. He need not be booked, as Counsellor Benny well knows, to have been made a prisoner. The fact that he was deprived of any opportunity that he might want to get away constituted him a prisoner under the law. He was brought in with three men that were with him. The fact that Chief
- 10 Clossey maintains that there was undue delay at headquarters need not be taken as an affront to the Chief, because he certainly is entitled to his opinion, which is all that he gave. There was a turmoil, which is readily understandable. There was a lot of consternation in headquarters, with officers and civilians running in and out; friends coming in and out. It was a fatal accident, there were two people killed almost instantly, and that turmoil and confusion was to be expected.
- 20 It is not what Lieutenant Broadhurst did that brings him before this court. Counsellor Benny and Lieutenant Broadhurst and this Commission know why he is here. Lieutenant Broadhurst—I will give him this—probably had every good reason, or felt that he had every good reason, to do what he did; but the consequences of his acts are what brings him before this court, as the consequence of many a good deed might bring a lot of punishment. I do not insinuate, nor do I intimate, that Lieu-
- 30 tenant Broadhurst had malice, or a friendship for any man in this case, when, as he maintains, he called me or Nolan, or any one of a thousand lawyers in this county. The fact remains that this man Kirby came to headquarters. Lieutenant Broadhurst suggested maybe my name, and in the absence of anything to the contrary I will take that to be the fact. After he got through trying to get me he then tried to get Nolan, and when he could not get Nolan he then called the home of
- 40 Feinberg. I am not maintaining that his acts in

trying to help these boys constituted a serious and flagrant offense, but what is the outcome and the result of his efforts, granting that there were efforts? Kieby comes down and asks him to try and arrange for the release of only one boy. Naturally Lieutenant Broadhurst was not in a position to allow even one boy to go out. They were material witnesses and had to be bailed. He then tried to arrange it as best he could, but Lieutenant Broadhurst had no right to go with Kirby to the Seventh Precinct Police Station. He knew that. I don't say he had anything in mind when he did that. I do not say that in his conduct in this case Lieutenant Broadhurst did anything that might not be done by any other policeman in the whole country. I do not maintain, and we cannot show that there was any malice in his conduct; as I repeat for the third or fourth time, there was ultimately a situation that had to be brought to the door of this Commission and the fault thrown at the feet of Lieutenant Broadhurst. Here is a young man that comes over from Long Island, lives here a very short time, and comes down to headquarters and asks for help in releasing his friends. Lieutenant Broadhurst suggests somebody. This man is met the next day by Feinberg the next day by arrangement. All this man has in the world is seven hundred and fifty-six dollars in a savings bank, and seven hundred and fifty dollars is taken away from him as defense for these boys. Mr. Feinberg is not on trial here. This is not his trial, but I am sorry to say that it appears from the mass of testimony that has gotten into the record here, that Lieutenant Broadhurst, while he also may have acted in good faith throughout this transaction,—that the ultimate result is that strangers have come here and have been brought

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into the Boulevard Police Headquarters, and have, through arrangements, which might have been in all good faith,—nevertheless these arrangements resulted in this man being out seven hundred and fifty dollars; and we cannot take into account the fact that they have been furnished with bail or

10 defense.

I am not going to present before you gentlemen the fact that in the beginning of this case we were to have had proof, and nothing would have pleased me more than to have seen proof that these men were not unduly delayed at headquarters. We have had the books of the Jersey City Police Department here, and we have had the Boulevard Police Department books here. As far as the time by which we maintain these arrangements were made, it

20 shows that it coincides with what the Chief maintains, that there was undue delay in having these men sent out of headquarters to be properly booked. Officer Kelty, who was called by the defense, was in the back room and in the front room. I asked him—and personally I was hoping that his answer would be yes—whether he heard Lieutenant Broadhurst call me or Nolan or any one of any other five hundred lawyers, or even call Mr. Feinberg, and he said he did not hear any other calls;

30 that he himself called for the patrol wagon but he did not hear any other calls. Certainly Mr. Kelty as a witness for the defense and a brother officer, would have been only too glad—and I wouldn't blame him for coming in and testifying if he had heard any other calls going out; and I want to bring this other fact to the attention of you gentlemen, that Lieutenant Broadhurst,—the very last question that I asked him was, "Who made the arrangements for Feinberg to see Kirby as to this

40 particular case?" And if I am not mistaken his answer was "I did."

This charge is not, standing alone, serious, but where it involves the integrity of the Commission and the police department it certainly is. We ought to put ourselves in the place of this man, who is a stranger here, coming down to help friends in a matter as serious as this, and still not so serious.

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Jack Feinberg knows, as well as I know, and everybody else knows, this was a charge of manslaughter which was brought against this man. He was driving a car that was involved in the accident. These men were not drunk, they weren't boisterous; there was no other charge made except that they were there on the scene of the accident and their car was involved. These men have testified that they did not ask to be bailed out that night; that they only wanted to get one of the men free. Certainly Mr. Feinberg did not testify that he got in touch with Judge Kinkead, or Judge Egan, or any of the Common Pleas Judges, to have one of the brothers—and that was the only one they wanted out—paroled in his custody, to go home and assure his mother that it was nothing serious. That was not done, and there has been no attempt made to show that that was done.

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After all the interest of this Commission in this case is not what specific violation of the Manual was committed by Lieutenant Broadhurst, but the Commission is interested in the effects, the results, of that violation. Was it proper for Lieutenant Broadhurst to put himself in the position of being a party—whether he was innocent or guilty of it,—to this man being taken for a seven hundred and fifty dollar fee? And when I say that I do not mean that that fee is improper or that it is illegal.

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The record as it is speaks for itself. I am satisfied with it, and I am satisfied with whatever find-

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10 ing you gentlemen may make. As much as this case has cost this county in the matter of time and trouble to all the parties concerned, I really feel that it has been brought about through a violation of one of the orders, and that Lieutenant Broadhurst did himself, while he pleaded not guilty, admit to that violation himself in his cross examination.

Chairman Kleffman: Decision reserved.

Exhibit C-1.

EXTRACT FROM POLICE MANUAL.

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GENERAL

Members of the department are prohibited from recommending to prisoners any bondsmen or the employment of any person as attorney or counsel and are forbidden to suggest or name any lawyer or other person to a prisoner with a view to his defense, at any time.

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Finding and Judgment of Boulevard Commission.

MEETING OF THE BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, HELD AT THE COURT HOUSE, IN THE CITY OF JERSEY CITY ON NOVEMBER 9TH, 1929.

Present.—President Kleffman.

Commissioners Meister & Chapman.

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Absent.—None.

Appeal to Civil Service Commission.

EXTRACT FROM MINUTES.

President Kleffman reported that the Board had considered the charges preferred against Lieutenant Broadhurst by Chief Clossey, found him guilty as charged and decided to reduce him to the grade of patrolman to take effect November 12th, 1929, a decision in which all the members had concurred. 10

Upon motion the report was received and action endorsed.

Appeal to Civil Service Commission.

In the matter of the charge of William F. Clossey, Chief of the Hudson County Boulevard Police against Lieut. Thomas J. Broadhurst and the judgment or finding of the Hudson County Boulevard Commission thereon. 20

To the

Board of Civil Service Commissioners of the State of New Jersey:

Gentlemen:

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I hereby appeal to your Honorable body from the judgment or fining of the Hudson County Boulevard Commission, dated November 9, 1929, in the above entitled matter, wherein said Commission found that I was guilty as charged. Among the grounds of appeal are the following:

FIRST: Said charge is not made in accordance with law and the provisions of the Police Manual 40

Appeal to Civil Service Commission.

governing charges against members of the Hudson County Boulevard Police Department.

SECOND: Said charge does not allege any violation of the provisions of the said Police Manual.

10 THIRD: Said charge does not allege any triable offense.

FOURTH: At the trial of said charge, said commission, in violation of law, failed to limit evidence to the matter contained in said charge, but on the contrary took testimony concerning many things, at several places, not mentioned in said charge.

20 FIFTH: The judgment or finding of said commission, as shown therein, is based upon distortion, misrepresentation and misstatements of the evidence and upon matters or theories concerning which not one word of testimony was given or evidence of any kind introduced, and which exist only in the minds of said commission, or of others, and which do not exist in fact.

30 SIXTH: The judgment or finding of said Commission and the conclusion of the Commissioners therein recited are directly contrary to the evidence in the case.

SEVENTH: My trial upon said charge by said Commission was unfair.

Respectfully submitted,

(Sgd.) THOMAS J. BROADHURST,
By ALLEN BENNY,
Attorney.

Hearing before Civil Service Commission.

HEARING IN THE APPEAL OF THOMAS J. BROADHURST
HELD IN THE CITY HALL, JERSEY CITY
NOVEMBER 27, 1929

APPEARANCES:

JULIUS L. REICH, Esq., for the Hudson County Boulevard Commission. Thos. Meehan, Esq., Hudson County Law Department. 10

ALLAN BENNY, Esq., for the appellant.

Commission CARL A. RUHLMANN, representing the Civil Service Commission.

Comm'r Ruhlmann: Will you come to order please? This is a hearing by the Civil Service Commission on the appeal of Lieutenant Thomas J. Broadhurst on charges preferred against him for wilful and deliberate violation of the "general" order of the Hudson County Boulevard Police Department as cited in paragraph "General" pages 17-18 of the Manual. 20

This case was heard by the Boulevard Commission sometime ago and a decision rendered reducing Lieutenant Broadhurst to the rank of patrolman. It is upon this decision that Lieutenant Broadhurst appeals and the Commission is ready now to hear a presentation of the facts in the case. I am going to ask counsel representing Lieutenant Broadhurst and the Boulevard Commission to have a very orderly presentation of the facts, and we are going to allow all the leeway possible in order to have the facts presented. It is not our idea to adhere strictly to the rules of evidence and if any extraneous matter is injected into the proceedings 30 40

Hearing before Civil Service Commission.

the Commission will discard it in its consideration of the case.

We will now proceed.

10 Mr. Benny: If your Honor please, I take it that this is a hearing all over again and we have to proceed in the same way as before, by the presentation of the case on the part of the complaining witness. They have made a charge against us and I think they should proceed with their proof so your Honor may hear what the charge is and we can defend in the regular way.

Comm'r Ruhlmann: If there is no objection.

20 Mr. Reich: There is an objection to such proceedings as this under the circumstances. Appeal was to the Civil Service Commission and a man who has had a trial before the proper authority, resulting either in fine, demotion or anything along those lines certainly is not required to come before this commission for a trial de novo. To begin with, the charges are preferred by the Chief of Police—not because of the fact that he is actually concerned only as the head of the department, but the complaining witnesses are individuals outside of the scope and authority of either the Boulevard Commission or anybody in this state. The four complaining witnesses are without this state, and not
30 amenable to process. We have a record—Mr. Benny knows that—we have a record of these proceedings and it has been held in this state, if the Commissioner please, that the only method of procedure in civil service cases where there is no dismissal, to be had is either on the record or the person so found guilty may show that there has been such an abuse of discretion by the governing body which made the demotion or imposed the fine or it can evidentially be shown outside of the record. Now the testimony
40 of the complaining witness in this case is in that

record. Certainly this Commission nor any other governing body cannot expect that we can at will subpoena people without the state. You know very well, Commissioner, that cannot be done and cannot be arranged. The testimony in this case is typewritten and taken verbatim. Your Honor has a perfect right, as well as the entire Commission, to review this case on the testimony as it has been decided. This bringing in of any extraneous circumstances is not fair either to the Commission that sits and hears it or to the Boulevard Commission, because their decision was based on what was heard by them and certainly if the appeal is from that decision then the sum and substance of the testimony that was deduced at that trial should also govern this Commission. 10

Now to go into this case right from the beginning is in the first place useless because of the fact, as I say, that it is stenographically taken and the entire record is clear. Certainly in an appeal from a lower to a higher court, which in this instance works identically as appealing from that decision to the Civil Service Commission, they cannot come in before this Commission at this time and expect us to produce witnesses in a matter over which we have no control; for instance, that it would be very damaging testimony in the record and we could not produce witnesses because of the circumstances as I have related. Certainly this Commission would not say that because of the fact that these men are not liable to subpoena, their testimony is to be taken and disregarded. I am willing to stand on the record and I don't know why counsel for Lieut. Broadhurst is not willing to stand on the record. The objection can only be made on that. He should close his case as the Boulevard Commission closed its case. Appeals when taken are not taken by addi- 20 30 40

tional testimony because the case could have been left open for taking additional testimony where that was requested. After closing a case and the case being a matter of record we are satisfied to submit this record to your Honor for review and for decision. It is not a question of testing the validity of your Board's ruling, regardless of what it may be, on this particular case and that record.

Comm'r Ruhlmann: Am I to understand Counsellor, that you have not got the complaining witness here?

Mr. Reich: That is impossible under the circumstances. These men are not liable to subpoena. These are four men, four witnesses who all reside in New York. They have given their testimony. Certainly I appreciate the Commission wants to be fair in this matter. A county body has determined on the testimony that was adduced before them. Certainly the Commission doesn't want to go beyond that. That is in the record. Mr. Benny had the right to cross examine those men. That is in the record. Their answers are verbatim. It was taken by a court stenographer. Mr. Benny has the record. I am satisfied to submit the case on the record for your decision.

Comm'r Ruhlmann: Mr. Benny, is there any objection to submitting the evidence adduced at the previous hearing of the complaining witnesses to this Commission as their testimony, or as that to which they would testify if they were here?

Mr. Benny: I take it we have a perfect right here to a trial de novo. There are lots of appeals where the trials are de novo and lots of them where the trial is on the record. I think this belongs in the class where we can try it all over again. Wouldn't it be a fine situation where you can bring in four witnesses as the complaining witnesses from New

York who can swear to anything they like, the biggest lie, and then retreat across the river, and when we get in a position to bring all sorts of evidence against them to show they are lying, we can't bring them back. The same power, the same influence, the same promises that brought them here originally can bring them back. Chief Clossey knew how to get them here. 10

Mr. Reich: I don't think that is argumentative. I directed my argument to the record in this case. It isn't necessary to bring personalities into this thing at all. Counsellor Benny can make all kinds of aspersions but I object to any threats or aspersions going on the record, of anything of that kind.

Comm'r Ruhlmann: I said at the outset that we should conduct this hearing along orderly lines. I know very well that the Commission does not look with favor upon personalities being indulged in by the witnesses or counsel. Another thing I wanted to say to Mr. Reich was that anything that counsel may say referring to Mr. Broadhurst or even himself will not be considered as evidence in the case. What we are after is the testimony of witnesses. 20

Mr. Benny: I presume counsel will admit that the complaining witness, or the complainant or himself—somebody on that side brought these men from New York. They got here, they testified, they didn't come without somebody bringing them here. We didn't. Now then I say the same power that brought them here before can bring them again. I don't mean anything personal against Chief Clossey, who is the complaining witness. He got them here, now he can bring them back. We want to examine those men on certain things. Counsel may say not, but we know things we didn't know the other night. We want these men back; they can come here if the other side wants them here. We all know that. 30 40

They should be here this morning. However, I don't object if your Honor thinks it is the proper thing to do. I will submit to your judgment in the matter to proceed on the record itself because there is not a living thing in that record against Lieut. Broadhurst. Now there is something beside the
10 record, however, that we want in. There is the finding by these Boulevard Commissioners. Counsel said something to the effect that unless there was an abuse of discretion we had to proceed thus and so. There is an abuse of discretion on the record here. It is on the finding of the Commissoiners. I want to examine them on it to add to the record, then I will consent—although I would be glad to have those men here and I am disappointed they are not. I consent to use the printed record but want
20 to get additional testimony on the record.

Comm'r Ruhlmann: We will be glad to hear additional testimony but it will facilitate things very much if counsel can agree to submit the record before the Police Boulevard Commission as the testimony that will be presented here today.

Mr. Benny: I haven't all the testimony here. I have the testimony of the complaining witness on the part of the complainant and I have Lieut. Broadhurst's testimony, but I haven't the testimony
30 of the other witnesses but we can get it of course and submit it with this. Now I will agree with counsel that the entire record goes in and on that, of course, with the testimony we take here this morning we will submit the case.

Mr. Reich: In answer, Mr. Benny, to that, I am perfectly satisfied except for this one point. There has never been a case in the State of New Jersey where any governing body or deciding magistrate judge, commissioner, board or commission or council can be examined as to any abuse of discretion
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and if Mr. Benny will show me any authority for such a remark that the abuse of discretion may be gone into and a review of hearing, I will be glad to withdraw any objection to his proceeding into how, why, when and where this decision was rendered. It was given in writing and that is part of the record as Mr. Benny well knows and that goes right along with the record. 10

Comm'r Ruhlmann: I think the principal thing that is to be determined here today is the truth or falsity of the charges preferred against Lieut. Broadhurst. Apparently, I don't see that an abuse of discretionary powers is essential to the thing. What we are interested in primarily is the evidence as to Lieut. Broadhurst's guilt or innocence and if counsel will agree to put the record had at the previous hearing before the Boulevard Commission as the record in the proceeding here this morning, I will grant permission on behalf of the Commission for Mr. Benny to submit any additional evidence. I don't think it is important enough to call the Commissioners themselves because, after all, they were the judges in the thing and they have a perfect right to say that in their discretion that Lieutenant Broadhurst was guilty. 20

Mr. Benny: If your Honor please. Here is a finding by the Boulevard Commission that is part of the record. It has come before your Honor for settlement. I certainly have the right to examine the Commissioners and ask what certain things mean. 30

Comm'r Ruhlmann: If you want to clarify it I don't have any objection.

Mr. Meehan: I have an objection to it. First, for the record I want to object to a trial de novo or any additional testimony. Now of course your Honor can see it is absolutely against all precedent 40

in legal procedure to examine a board or members thereof on their findings. If your Honor decided a case some months ago and there was an appeal or another investigation in respect thereto you wouldn't want to be put on the stand to find out what such and such a sentence meant in your judgment. What it means is it has to stand on the language therein. You are going to find out and determine whether the testimony is true or false from a reading of it. You are going to determine whether the judgment was legal or based on the evidence. It is improper to examine the Commissioners on their findings. They stand as is.

Comm'r Ruhlmann: Mr. Benny, what part of the decision of the Boulevard Commission do you feel is ambiguous? Will you read it?

20 Mr. Benny: All of the testimony in the case and I think counsel who tried the case will agree with me. All of the testimony on both sides is to this effect—that the telephone communication between Lieutenant Broadhurst and Mr. Feinberg occurred in police headquarters, Jersey City Boulevard Police Headquarters well after midnight, after the man who had been on the desk up to midnight had gone away, Lieut. Hanley, and another Lieutenant took his place. The testimony of Kirby, the principal witness, is he got to headquarters about 12:30 that night. After he got back Lieut. Broadhurst tried to get him a lawyer and telephoned finally to Feinberg after efforts to get Mr. Reich and Mr. Nolan failed. I think that is agreed on both sides; it occurred at 12:30 at night.

Mr. Reich: Whatever the record shows.

Comm'r Ruhlmann: The record speaks for itself.

40 Mr. Benny: The record on all sides is to that

effect. Now listen to this finding. This is the Boulevard Commissioners signing this finding. "The evidence shows these four people were held at Boulevard Police Headquarters from 9:20 to 11:50 P. M. with Hanley still on the desk and our conclusion for this delay is well founded, * * * namely, in fact, since during that time, namely, between 9:20 and 11:50, the telephone arrangement between the lawyer procured by Lieutenant Broadhurst was effected. This is admitted by Lieut. Broadhurst himself." That is absolutely and downright false. I want to examine them and ask them how they get that. 10

Comm'r Ruhlmann: I don't think it is necessary at all, Mr. Broadhurst, to examine them on anything. The record speaks for itself and I think the Civil Service Commission upon a perusal and study of the evidence will be able to render its decision without hearing the members of the Boulevard Commission. They were not the witnesses in the case, as I understand it, in the previous case. 20

Mr. Benny: Oh, no, it was tried before them.

Comm'r Ruhlmann: I don't think it is essential we have them here.

Mr. Benny: All right. Now may I call the Clerk of the Board of Boulevard Commissioners to prove a record by him? 30

Mr. Reich: I don't want to stop this proceeding. I have an objection noted on the record to any extraneous evidence that was not adduced at the previous trial. If your Honor will allow this matter to go on I will take an exception.

Mr. Benny: I will withdraw it.

Comm'r Ruhlmann: You mean on that point?

Mr. Benny: I won't call the witness.

Comm'r Ruhlmann: You have the privilege if you want to. 40

Mr. Benny: I will call him in a different kind of suit before long. Is the court ready to hear my argument now?

Comm'r Ruhlmann: Now you are summing up on the testimony of the record adduced at the previous hearing, is that it?

- 10 Mr. Benny: Yes, sir. I am going to show your Honor the charge. The charge is that Lieutenant Broadhurst is charged with violation of the "General" order of the Hudson County Boulevard Police Dept. as cited in paragraph "General" pages 17-18 of the Manual, and the specification is this: "In this that the said Lieutenant Thomas J. Broadhurst of the Hudson Boulevard Police, on or about September 28, 1929, at Headquarters, recommended to prisoners, the name of counsel with a view to their
- 20 defense, and did then and there solicit and procure counsel in their behalf and did negotiate for the purpose and object of escaping the penalty of the law in such case made and provided.

- There is not a word of evidence in the case to indicate that there was a prisoner. There is not a mention in the charge that Broadhurst talked to John Jones or Madigan or Tim Smith or anybody else. Can you imagine a charge being made against a man for murder and the indictment reading "He murdered the prisoner." I wonder how
- 30 long it would last in the court room. It would go out of the window. The first necessity in a murder case is to prove that so and so is dead. Take the case in New York the other day, this big gambling case. The first thing they had to prove was the death of the particular man and if they couldn't prove that they couldn't go any further. He had to be named in the indictment. It wouldn't do to say so and so killed a gambler in New York.
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He has to be charged with doing something to or with somebody. Here he is charged with doing something to a prisoner unknown and unnamed. I don't think we should go any further than that. That in itself would cast this charge out definitely,—because there is no definite charge. Sometimes a man is murdered and his head is gone. The first thing to do is to find the head in order to find that the man named is the actual man who is dead because if that man alleged to have been murdered was to walk in afterwards it would be bad for the prosecutor. You can't charge a man with doing things to an unknown group of men. The reason they are not named is because they could get it inside what they thought was the provision of the manual. The idea of the manual is to prevent police officers from taking men accused of crime and helping him to evade the penalty of his crime. That is the purport of this paragraph which they say Lieut. Broadhurst offended against. 10 20

On page 17 it says: "Members of the department are prohibited from recommending to prisoners any bondsman or the employment of any person as attorney or counsel and are forbidden to suggest or name any lawyer or other person to a prisoner with a view to his defense at any time; further, no member of the department shall take part or be concerned either directly or indirectly in making or negotiating any compromise or arrangement with any person whatsoever, the purpose or object of which may be to permit the one accused of wrongdoing to escape the penalty of the law." 30

The testimony shows one man was accused of some wrongdoing. Thomas Madigan was finally accused of a misdemeanor. He was the driver of 40

the car. When was he accused? This charge says Lieutenant Broadhurst did something in headquarters. All of the testimony is that these men were in headquarters until a little before twelve o'clock, eleven-fifty to be exact, then they were taken over to the Sixth Precinct Station House.

- 10 Who were they? Thomas Madigan without any accusation or complaint against him up to that time, and three voluntary witnesses from New York. The testimony uncontradicted also is that following this accident a number of other witnesses were brought into police headquarters. They were not prisoners. If you and I had seen the accident we would have to go to police headquarters and would have gone. The record shows a number of people went down to headquarters residing in
- 20 Jersey City. They made their statement and went away. The three witnesses from New York are not prisoners; there is no charge against them. They can't evade the law. They haven't done anything. They are merely witnesses. How could Broadhurst deal with them for the purpose of them escaping the law? There is no penalty.

- Now after they had all left headquarters, and it is in headquarters this allegation states the crime was committed by Broadhurst, after they all left
- 30 headquarters and gone to the Sixth Precinct Station House, then at 12:30 a charge was made of manslaughter or, as the complaining side says, technical manslaughter. A charge was made against the driver of the car of manslaughter. Then he was made a prisoner and could do something in violation of the law. Then if Broadhurst cooperated with him for the purpose of having him escape the penalty of the law he could be guilty of this charge. Now what did Broadhurst do? He
- 40 did what you would have done, the Chief of Police

would have done, anybody would have done—the testimony is by the young man, Kirby, who was not one of the men involved at all. He was at the home to which the other people were going and knew nothing about it until after the accident happened. He says directly in his testimony that he came into Boulevard headquarters after twelve o'clock at night. These other people had all gone away. He told Lieut. Broadhurst he was a stranger, had just been married and came over here to live. He asked Broadhurst what Broadhurst would do in his position. This is Kirby's testimony in the record. Broadhurst says I would see my leader or a lawyer. The chap says "I don't know anybody. I don't know a leader or a lawyer. Is there anybody around that can help me?" Broadhurst says the streets are full of them. Kirby says, "Will you help me get somebody?" And Broadhurst called up to help this fellow. The young fellow says in his testimony he wanted help because Thos. Madigan, the driver charged with manslaughter, and William had an old mother at home and Kirby says the mother would be worrying about the boys. He said "If I could get Wm. Madigan out so he could tell the mother that Tom was staying with Kirby all night it would be all right." So then he undertook to get Broadhurst to find somebody so he could release the witness and she would not be worried to death. What did Broadhurst do? He tried to get Reich on the telephone. It was 12:30 and he couldn't get him. Then he tried to get Ezra Nolan and his 'phone didn't answer. Somebody said Jack Feinberg had just gone down the street and he finally got him at 12:30 at night. So Kirby talked to Feinberg and asked him if he would come down at that time of night and get this fellow out of jail, so he could

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get this fellow out and tell his mother where the brother was. So it was arranged that Feinberg would come down to see Kirby the first thing in the morning. Kirby was not involved. He was just a friend trying to get his friend out, and Feinberg came down and got the whole four of them out. That is the case against Broadhurst.

10 If there ever was an abuse of power by the head of the police force it is in the evidence of this case when Chief Clossey made a complaint against this man Broadhurst for doing what we did then. He did what he should have done and anybody would have done. He had a right to do it. I think he could have been chargeable with a dereliction of duty if he had refused this citizen to find some-

20 body who would bail out the witness so the witness could tell his mother the other brother was safe. There is not one word in this testimony from any one of those persons, any one of the three witnesses or the man charged with misdemeanor that they ever heard the name Feinberg until after 1:30 in the morning when at the 7th Precinct Police Station; that they had nothing to do with it. Tom Madigan against whom the charge of misdemeanor is, says, "I never spoke to Broadhurst." He is the

30 only man they had any right to call a prisoner and the only man who had any possibility of escaping from the law and even then the complainant and his witness, the complaining witness, your Honor, and the other witness took pains to get into the record that the charge against this man for misdemeanor was a mere technicality and he was not in any way to blame for the accident.

That is the crime this man has committed. He has served twenty years on the force without a mark against him of any kind, and he has served

40 his country in two wars and this is the man they

are now trying to railroad. No wonder my friend doesn't want to go into it further. I am sorry we can't get the attempt to railroad him in but I think, Commissioner, everybody in the community knows the gentleman is slated to go overboard and that John Flynn was picked to fill his place but they didn't dare do it. I would like to have gone into the meeting held downstairs—no wonder they didn't want that in. On the record I think that the Civil Service Commission should say to Lieut. Broadhurst, you did what any dozen men would have done in your place. You tried to help this kid to get one boy out to tell the mother the other was safe. If we are going to fine a man, demote a man, and going to throw men overboard who render that kind of public service, let's throw them all out and put in gunmen, wipe the whole force out and put that kind of men in. I have seen a lot of cases but have never seen one so low and miserable as this. It wasn't so much as attempt to get the Lieutenant there as an attempt to get Jack Feinberg. They tried to get Jack Feinberg—there was no case. They came into court with an attempt to show that Jack Feinberg had taken \$750 from this man Kirby as security for bail. Jack has a brother who is very active on the other side. Now if your Honor please, the testimony will show that it was an attempt to get Jack Feinberg for that money, and the complaining witness, young Kirby, testified openly, just a bare-faced untruth—he testified and it is in the record that he gave \$750 to Jack Feinberg—not only once, but two or three times—that he gave him \$750 as security for bail that Jack Feinberg put up for these four people. The bail was \$4,000 and first there was shown a receipt that Jack Feinberg produced which said it was a “fee” for service in the case of

- manslaughter against Thomas Madigan. Then Kirby tried to explain that, that he didn't see the receipt until Feinberg had left. He had given Feinberg what money he had and he didn't notice it at the time. Afterwards he did see it. Feinberg's testimony is directly opposite. That this
- 10 man not only saw the receipt but read it and folded it up and put it in his pocket. Then Monday afternoon, five hours later, during all that time that man had the receipt in his pocket, Feinberg and Kirby met again in Judge Sullivan's court room where the man was arraigned before the court on the charge of manslaughter and bail was renewed by Feinberg. Then in that court room they sat down and on the paper of the court room in a formal receipt is written by Feinberg for
- 20 Kirby and in that it said "\$750 paid to him was for the fee in the charge of manslaughter against Thomas Madigan"; then Reich in open court said the fee was all right and not too high and in summing up the other day said it was not illegal or irregular and he had no fault to find with it. Jack Feinberg produced evidence and Kirby was called on the witness stand and didn't deny a word Feinberg said. One question was asked which was irregular, I objected to it and the witness was with-
- 30 drawn without a single word against the testimony.
- He said after he gave this second receipt in the court room for this \$750, Kirby then said "Friendship is all right but money is money, I ought to have some writing from these boys saying they owe me this money." Right then the four mentioned, the man charged with manslaughter, the three witnesses and a friend who witnessed the paper—another document is written out in which these four men say to Kirby they owe him \$750 which he put
- 40 up as fee in this case. There it is on the record,

after the man said he thought it was security for bail. That is what they were after in this case. When the bottom dropped out they didn't have the nerve to throw Broadhurst out altogether. In their finding they reduce him from a Lieutenant to a patrolman. If he is good enough to be a patrolman he is good enough to be a Lieutenant 10 and he ought to be a Lieutenant. Right in the notice which they served on Lieut. Broadhurst they quote the law, Chap. 236, P. L. 1917, which provides: An employee in the competitive class may appeal to the Civil Service Commission within ten days after his removal, fine or reduction and that no removal, fine, etc. shall become effective until approved by the Civil Service Commission. There is no approval by the Civil Service Commission of the demotion of this man. Yet on the 13th they 20 serve him with a notice that he is reduced. Maybe that is regular and in good form. The Civil Service Commission didn't know anything about it until now it has come before them. Yet the law is you can't demote a man until the Civil Service Commission approves it. They held a meeting on the 13th and say he was demoted the day before. They are anxious to get him in a patrolman's uniform because they figure he might refuse to go on duty and then they would have him on another charge. He is out doing patrolman's duty because 30 the order is there. I am not going into the evidence any further than I have. I am going to ask this, that the Commission give me a few days to get the balance of the testimony together and then the Civil Service Commission go through that testimony carefully. I also would like to find what the Commissioners decide on it because it is very illuminating and when fitted in makes a mosaic and if that mosaic doesn't spell a re-deal against Lieu- 40

tenant Broadhurst, then I never saw anything that did.

- Mr. Reich: I don't know just where to begin to answer Counsellor Benny in relation to this case but of course I didn't expect Mr. Benny to pick out of the testimony such pertinent facts which were
- 10 not in the least consistent with the decision arrived at by the Boulevard Commissioners. The facts as related by Mr. Benny are substantially correct; that is, about the men involved and the circumstances of their arrest. To try to follow out his line of thought from the very beginning, Mr. Benny knows and so does everybody else, that immediately after this accident and when these four men were brought into headquarters they were prisoners. He knows that as well as I do—trying to spell that the
- 20 Boulevard Police received company that evening doesn't jibe with the actual facts. When the officer on the post told that driver and the three men in the car to go to headquarters they were technically under arrest and the law on that point has been established on a hundred different occasions when a man is under arrest he need not be booked or under lock and key but the very fact that a policeman puts his hand on his back or tells him you have to go to headquarters technically constitutes
- 30 that man a prisoner. They were prisoners from the time they left that wrecked automobile until the time they were released on bail. I don't see why the Police Department, either the Boulevard Police or the Jersey City Police, would demand Five Hundred Dollars bail from anybody as a material witness when there is absolutely nothing wrong with them. They are not prisoners but still they must give bail. Certainly Mr. Benny doesn't want us to believe that. I tried to be, and Mr. Benny will
- 40 have to agree with me, as fair as I could possibly be.

Evidence has gone into this record that was clearly objectionable. I might say for Mr. Benny that that happened on both sides. This case was entirely exposed. There was nothing kept back either on his side or my own. What witnesses he wanted to call he called. What testimony I had to put in I put in. But behind all this beautiful picture that Mr. Benny paints is this fact, that somebody, and Mr. Benny knows who that somebody was, and the testimony will show it, had \$756 in a savings account and through the generosity of Lieut. Broadhurst, and when I say that I mean it,— I don't mean he started out with this fact in mind he was going to get this fellow to unload his \$750, but the result of his contact brought about this fact that a man that was absolutely unconcerned from a financial angle with this case and was out to help four men that found themselves in a difficult situation, was taken for the \$750. I have no way of discounting the fact that Lieut. Broadhurst called me. I have no way of discounting the fact that he called one of 10,000 lawyers in the State of New Jersey. The fact remains that here was a case where a superior officer in a police department, and the testimony will show it more than you or any other individual can show, a police officer got in touch with a lawyer in connection with a case of this type and two days later or forty-eight hours afterwards a man had \$750 withdrawn from his savings account in New York. Whether that man lied or whether he didn't lie the Commission that heard this case, the same as you yourselves, have a perfect right to place as much credence and reliability in their testimony as you see fit from the circumstances.

These men were brought into police headquarters at approximately 9:50 or 9:10, something like that.

They were kept there, they were still there at 10:10, still there at 11:10, and still there at 11:30 and this little discrepancy appears, that while the patrol wagon from the Jersey City police department was called to remove these men; they talked to the police precinct as is the usual procedure in those cases and it was maintained that the patrol wagon was called for three times. The record of this precinct will show you that while it may have been out the first time, it returned and came to headquarters at 11:50 when these men were taken out. The meeting that my friend, Mr. Benny, attempts to bring out wherein one Jimmie Flynn was supposed to have gotten Lieut. Broadhurst's job, or something along those lines, which he has indicated to Your Honor, is a beautiful piece of lace, or it might be all wool and a yard wide. That is not in the record. Neither is it in the minds or knowledge of anybody, but coming before Your Honor I presume it is a very nice thing to bring up.

Speaking of being railroaded, this Commission has absolutely nothing to lose by demoting a police officer, nor have they anything to gain by fining him or even bringing him up for trial. His record was proven in court. The record is very good and I am not going to pick out anything hurtful to Mr. Broadhurst, I am not going to pick out those damaging parts in the testimony of these four witnesses which will show how this thing was maneuvered. I feel your commission has sufficient intelligence to read this thing as a whole and decide the facts as you would decide them. You may not even agree with the Commission in their findings but I want to call your Honor's attention to this fact: When this testimony was taken and analyzed it was not taken on Lieut. Broadhurst's testimony. They didn't decide it on the testimony of the four men who were

the complaining witnesses, nor on the squabble in court or the objections raised. Mr. Kirby was put back on the stand, as Mr. Benny says, after Mr. Feinberg went off. He said he didn't disapprove what Mr. Feinberg testified to. He didn't say Mr. Feinberg didn't tell the truth. That is very true as Mr. Benny represented. Now he comes before your Honor and raised a hue and cry here. Why didn't he deny it then. I wasn't going to press it because I felt it was unnecessary. If the evidence as adduced merited this deduction on the part of Lieut. Broadhurst or whether it didn't, the fact remains that four citizens came over to this city, and forty-eight hours afterwards a citizen of Jersey City had \$750 and the Police Dept. and the Boulevard Police was the means of bringing about the connection that separated this man from his \$750. We have nothing against Lieut. Broadhurst. It was not done because any of the Commissioners or myself had any idea, or Chief Clossey wanted him broken. We had no reason to break Lieut. Broadhurst, absolutely none, but where a set of facts appear from which it may be reasonably adduced that the conduct of a superior officer in a police department was such as they decided, they have a perfect right under all the law in the state, to mete out such punishment as they see fit, and unless the Civil Service Commission of this state determines that there was an abuse of discretion, which has been very liberally construed in this state, as your Honor will find, in that event the decision will stand and I am perfectly satisfied to submit this to the Civil Service Commission of this state on the record as it stands.

Comm'r Ruhlmann: Decision will be reserved.

Finding of Civil Service Commission.

December 3, 1929.

Gentlemen :

10 The appeal of Thomas J. Broadhurst, reduced from the rank of Lieutenant, Hudson County Boulevard Department, to the rank of Patrolman in the same Department on November 12, 1929, was regularly brought on for a hearing before me at the City Hall, Jersey City on Wednesday, November 27, 1929.

20 Lieutenant Broadhurst is charged with the violation of a general order of the Hudson County Boulevard Police Department in that he did, on or about Sept. 28, 1929 at headquarters, recommend to prisoners the name of counsel with a view to their defense and did then and there solicit and procure counsel in their behalf and did negotiate for the purpose and object of escaping the penalty of the law in such case made and provided.

30 Julius L. Reich, Esq., appeared for the Boulevard Commission and Allen Benny, Esq., appeared as counsel for the appellant. Since a number of the persons concerned in the accident which lead to the charges are not residents of the State the appellant was apparently unable to produce them as witnesses. After considerable discussion a transcript of the entire proceedings in the hearing before the Boulevard Commission was offered and accepted by me. From the evidence presented in the proceedings before the Boulevard Commission and the information gained from counsel and the appellant the essential facts in the case are :

40 On or about September 28th an automobile accident occurred on the Hudson County Boulevard in which two persons were killed. The occupants in

the other car were Thomas A. Madigan, William Madigan, James P. Dulligan and Edward J. Connors, of New York City. These men were brought to Boulevard Headquarters at which time Lieutenant Broadhurst was on duty. It appears that these men were on their way to visit one James Kirby who lived near the scene of the accident. The testimony showed that Kirby himself had resided in that vicinity but a short time and was not acquainted with the people of the community. 10

On inquiry by Kirby as to what would be the likely procedure in a case of this kind he was advised that the driver would probably be held on a charge of manslaughter with bail fixed at \$2,500 and the other occupants of the car as material witnesses with a probable bail of \$500. On further inquiry as to what he should do the Lieutenant suggested that he see someone of acquaintance and influence in the vicinity or to obtain counsel. Kirby further asked for the names of counsel and the Lieutenant named over two or three lawyers and in assisting Kirby tried to get two or three of them on the telephone. In the meantime it seems that someone in the Station House noticed Mr. Feinberg, a lawyer, passing and called attention to the fact. At Kirby's request the Lieutenant did call Mr. Feinberg on the telephone. Subsequently it appears that Mr. Feinberg was employed by those concerned in the accident and Kirby to represent them in the matter. Out of this incident grows the charges. 20 30

I fail to find anything in the proceedings which indicates that Lieutenant Broadhurst did "solicit or procure" counsel for the persons concerned in the accident within the meaning of the orders in the Police Manual or that he did anything other than endeavor, as a good officer serving the public, to 40

Finding of Civil Service Commission.

give information and aid to the citizen in distress. The whole proceeding is free of even a suggestion that the Lieutenant sought to impose his choice of counsel upon Kirby or acted with any other thought in view than the full discharge of his duties as a peace officer.

- 10 It is my considered judgment that to condemn and punish a police officer for rendering effective and courteous service is bound to result in confusion and demoralization of the department. As a matter of fair dealing and in the protection of a police officer who is a veteran of two wars and who has served the people of Hudson County for almost twenty years with a clean and honorable record, I recommend that the action of the Boulevard Commission in reducing Lieutenant Broadhurst to the
- 20 rank and pay of a Patrolman be set aside and an order be entered restoring the said Broadhurst to his former pay and position as Lieutenant in the Hudson County Boulevard Commission as of the date of his reduction.

Very truly yours,

(Signed) CARL A. RUHLMANN,
CARL A. RUHLMANN,
Commissioner.

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Order or Judgment of Civil Service Commission.

Having received and considered the report of the sitting Commissioner, the following order was adopted by Unanimous vote:

IT IS HEREBY ORDERED that the action of the Hudson County Boulevard Commission in reducing Lieutenant Thomas J. Broadhurst of the Hudson County Boulevard Police Department after public hearing on November 27th to the rank and pay of Patrolman, effective November 12th, be set aside and that the said Thomas J. Broadhurst be restored to the rank and pay of Lieutenant as of November 12, 1929, and

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BE IT FURTHER ORDERED that a copy of this order be forwarded to the Clerk of the Hudson County Boulevard Commission and to counsel for the appellant.

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I hereby certify that the above is a true copy of the report as read and the order promulgated at the meeting of the Civil Service Commission, held December 3, 1929.

(Signed) CHAS. P. MESSICK,

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CHARLES P. MESSICK,
Chief Examiner and Secretary,
The Civil Service Commission.

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**Request for Modification of Judgment of
Civil Service Commission.**

In the matter of the charge of Chief William F. Clossey of the Hudson County Boulevard Police against Lieutenant Thomas J. Broadhurst, &c.

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To the State Civil Service Commission,
Trenton, New Jersey:

Gentlemen:

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Regarding the above matter and the order made by your honorable body on the 3rd day of December, 1929, setting aside the action of the Hudson County Boulevard Commission in reducing me to the rank and pay of a Patrolman and restoring me to the rank and pay of Lieutenant as of November 12, 1929, I desire to call your attention to the fact that I was suspended from duty, without pay, on the 18th day of October, 1929, and remained so suspended, until the 12th day of November, 1929, when I was put to work as a Patrolman and with a patrolman's pay.

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In view of your order above mentioned, I respectfully request you to make an order awarding me payment as a Lieutenant from the date of my suspension as stated above.

I thank you very heartily for the order you have already made in the matter.

Respectfully,

THOMAS J. BROADHURST.

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*Order Amending Finding or Judgment of Civil
Service Commission.*

State of New Jersey, }
County of Hudson, } ss.:

Thomas J. Broadhurst of full age being duly sworn on his oath says that the facts above stated as to the date and time of his suspension, without pay, are true. 10

THOMAS J. BROADHURST.

Sworn to and subscribed before me this
7th day of December, 1929.

ALLAN BENNY,
M. C. C. of N. J.

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**Order Amending Finding or Judgment of Civil
Service Commission.**

December 13, 1929.

Mr. John P. McMahon, Clerk,
Boulevard Commission Court House,
Jersey City, N. J.

Dear Sir:

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The Civil Service Commission at its meeting on December 10 directed that the order approved at its meeting on December 3 relative to the reinstatement of Lieutenant Thomas J. Broadhurst to the rank and pay of his position as Lieutenant, effective November 12, 1929, be amended to read as follows:

"IT IS HEREBY ORDERED, that the action of the Hudson County Boulevard Commis- 40

*Order Amending Finding or Judgment of Civil
Service Commission.*

10 sion in reducing Lieutenant Thomas J. Broadhurst of the Hudson County Boulevard Commission after public hearing on November 27 to the rank and pay of Patrolman, effective October 18, be set aside and that the said Thomas J. Broadhurst be restored to the rank and pay of Lieutenant as of October 18, 1929, and

BE IT FURTHER ORDERED, that a copy of this order be forwarded to the Clerk of the Hudson County Boulevard Commission and to counsel for the appellant."

20 We would call your attention to the fact that the above order specifies that Mr. Broadhurst shall be reinstated to his former position as of the date of his suspension, or October 18, 1929 instead of November 12, 1929.

Yours very truly,

CHARLES P. MESSICK,
Chief Examiner and Secretary,
Civil Service Commission.

30 IAM:BF

This is to certify that the amended order above set forth was adopted by the Civil Service Commission at its meeting on December 10, 1929.

CHARLES P. MESSICK,
Chief Examiner and Secretary,
Civil Service Commission.

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Reasons.

(Filed January 10, 1930.)

NEW JERSEY SUPREME COURT.

THE COUNTY OF HUDSON and
BOULEVARD COMMISSION OF THE
COUNTY OF HUDSON,

Prosecutors,

v.

THE CIVIL SERVICE COMMISSION
OF THE STATE OF NEW JERSEY
and THOMAS J. BROADHURST,
Defendants.

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On Certiorari.

The Prosecutors in the above entitled action herewith write down the following reasons for the reversal of the judgment or finding of The Civil Service Commission brought into this court by certiorari in the above entitled case:

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1. The Civil Service Commission illegally delegated to a single member of said Commission the right and duty of hearing the witnesses and receiving the evidence to be heard and received upon the investigation of the charges to be heard by said Commission upon the application of the defendant Broadhurst.

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2. The Civil Service Commission at the time and place fixed for a hearing of the case and a hearing of the charges to be investigated by it, did not hear said case and said charges and did not hear witnesses or receive other competent evidence relating to said charges.

3. The member of The Civil Service Commission to whom the investigation of the charges to be heard in this matter had been referred by The Civil Ser-

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vice Commission did not hear the case or the charges to be investigated in the manner required by the statute in such case made and provided, and did not hear the witnesses or receive other competent evidence relating to said charges.

10 4. The member of The Civil Service Commission to whom the investigation of the charges to be heard in this matter had been referred by The Civil Service Commission decided said case upon the testimony taken at the hearing before the Hudson County Boulevard Commission, and did not hear witnesses or receive other competent evidence in arriving at the conclusions reached by him.

20 5. There was no competent evidence before The Civil Service Commission or the member of The Civil Service Commission who heard the case to justify a reversal of the finding of guilty or a reversal of the judgment of the Boulevard Commission of the County of Hudson by it rendered against the defendant Broadhurst.

30 6. There was sufficient evidence before the Boulevard Commission of the County of Hudson to justify said Commission in finding the defendant Broadhurst guilty as charged and in imposing the punishment meted out to him, and neither The Civil Service Commission nor the member of said Civil Service Commission delegated to hear the case for said Commission was justified in reversing the finding and judgment of the Boulevard Commission of the County of Hudson upon the record of the proceedings had before the Boulevard Commission of the County of Hudson and upon which the finding and judgment of said Boulevard Commission of the County of Hudson was based.

40 J. EMIL WALSCHEID,
 Attorney for Prosecutors.

Opinion.

(Filed—Aug. 2, 1930.)

NEW JERSEY SUPREME COURT.

No. 247 January Term, 1930.

THE COUNTY OF HUDSON AND BOULEVARD COMMISSION OF THE COUNTY OF HUDSON, Prosecutors,	}	On Certiorari.	10
v.			
THE CIVIL SERVICE COMMISSION OF THE STATE OF NEW JERSEY, and THOMAS J. BROADHURST, Respondents.	}		

Submitted January Term, 1930. Decided 1930. 20

On Certiorari.

For Prosecutors: J. Emil Walscheid, Esq.

For Respondents: Allan Benny, Esq.

Before Justices Trenchard, Lloyd and Case.

PER CURIAM:

Thomas J. Broadhurst, a lieutenant of the Hudson County Boulevard police, was convicted by the Boulevard Commission of violation of a rule of the Commission which prohibits police officers from recommending bondsmen or the employment of attorneys to prisoners, and was sentenced to demotion from the position of lieutenant to the rank of a patrolman. On appeal to the Civil Service Commission this was set aside and Broadhurst was restored to his former rank and pay. 30

Under the writ of certiorari allowed herein the Boulevard Commission contends that the proceeding before the Civil Service Commission was illegal 40

and unlawful in that the proofs were taken before Commissioner Ruhlman alone, and also that under the evidence the Commission was not justified in making the order of restoration.

10 An examination of the record discloses that the hearing came on before Commissioner Ruhlman sitting alone. When the evidence was about to be taken Mr. Reich, counsel for the Boulevard Commission, objected to the taking of testimony and insisted upon the hearing being rested upon the testimony taken before the Boulevard Commission, and this apparently was done with the consent of both sides. At the close of the case counsel for the Commission stated that he was satisfied to "submit this record to his Honor (Ruhlman) for review and for decision."

20 It, therefore, appears that the irregularity of hearing before a single commissioner, if irregularity it was, was waived by the prosecutors. The statute, however, we think is adequate to empower the commissioner sitting alone to hear the evidence. Section 64 of the Civil Service Act. C.S. 3797, authorizes the Commission "to make investigations, either sitting as a body or as a single commissioner concerning all matters touching the enforcement and effect of the act and the rules and regulations prescribed thereunder * * * and in the course of
30 such investigations each commissioner and the chief examiner shall have power to administer oaths and affirmations and to take testimony." The testimony was, therefore, properly presented to Commissioner Ruhlman sitting alone, and the order of the Commissioner based thereon was, we think, in strict conformity with the statute.

Without going into the remaining question in extenso it is sufficient to say that the evidence
40 amply justified the conclusion reached by the respondents on the merits of the case.

The order is affirmed with costs.

Rule for Judgment.

(Entered—Aug. 27, 1930.)

NEW JERSEY SUPREME COURT.

THE COUNTY OF HUDSON AND
BOULEVARD COMMISSION OF THE
COUNTY OF HUDSON,
Prosecutors-Appellants,

v.

THE CIVIL SERVICE COMMISSION
OF THE STATE OF NEW JERSEY,
and THOMAS J. BROADHURST,
Defendants-Appellees.

10

On Certiorari.

The court having inspected the proceedings returned with the certiorari in this cause, the reasons assigned for reversal of said proceedings and having heard the argument of counsel thereon, and considered the same, DO ORDER that the said writ of certiorari be and the same hereby is dismissed, with costs.

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Entered, August 29th, 1930.

On Motion of

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ALLAN BENNY,
Attorney for Defendants.

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Substitution of Attorney.

(Filed—Sept. 9, 1930.)

NEW JERSEY SUPREME COURT.

10	THE COUNTY OF HUDSON AND BOULEVARD COMMISSION OF THE COUNTY OF HUDSON, Prosecutors,	}	On Certiorari.
	v.		
	THE CIVIL SERVICE COMMISSION OF THE STATE OF NEW JERSEY, and THOMAS J. BROADHURST, Defendants.		

20 I hereby substitute George E. Cutley, Esquire, as
 the Attorney for the respondents in the above en-
 titled cause, in my place and stead.

ALLAN BENNY,
 Attorney for Defendants.

September 2, 1930.

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New Jersey Court of Errors and Appeals

COUNTY OF HUDSON and the
BOULEVARD COMMISSION OF THE
COUNTY OF HUDSON,

Prosecutors-Appellants,

vs.

CIVIL SERVICE COMMISSION OF
THE STATE OF NEW JERSEY
and THOMAS J. BROADHURST,

Defendants-Appellees.

On Certiorari

BRIEF FOR DEFENDANTS-APPELLEES

The New Jersey Supreme Court sustained the Civil Service Commission in reversing the judgment of the Hudson County Boulevard Commission in finding Thomas J. Broadhurst, Lieutenant of the Hudson County Boulevard Police, guilty of violating the rules of the Department and reducing him to the rank of a patrolman (Case, p. 167). From that judgment the prosecutors appeal.

Facts

Thomas J. Broadhurst, Lieutenant of the Hudson County Boulevard Police, was demoted to the grade of patrolman, by finding of the Hudson County Boulevard Commission, dated November 9, 1929 (p. 134 bottom).

From this finding, Broadhurst appealed to the Civil Service Commission (p. 135), which heard the appeal, November 27, 1929, Civil Service Commissioner Carl A. Ruhlman sitting for the Commission (p. 137). Commissioner Ruhlman recommended the setting aside of the action of the Boulevard Commission and the entering of an order restoring Broadhurst to his former pay and position (p. 160) and the Civil Service Commission ordered that the finding of the Boulevard Commission be set aside and Broadhurst restored to the rank and pay of Lieutenant (p. 161).

It is this action of the Civil Service Commission which the writ of certiorari brings up for review.

The charge upon which Broadhurst was tried by the Boulevard Commissioners has three specifications alleging violation of the Police Manual, and all stated as having taken place at *Headquarters* of the Hudson County Boulevard Police, on September 28, 1929, viz.:

1. He recommended to *prisoners* the name of counsel with a view to their defense" and
2. "did then and there solicit and procure counsel in their behalf" and
3. "did negotiate for the purpose and object of escaping penalty of the law in such case made and provided."

The offences specified are charged to be violations of Rule General, pages 17-18 of the rules of this Police Department, viz.:

"Members of the Department are pro-

hibited from recommending to prisoners any bondsmen or the employment of any person as attorney or counsel, and are forbidden to suggest or name any lawyer or other person to a prisoner with a view to his defense at any time."

Broadhurst was not charged with recommending any bondsman.

Specification No. 3, above contains nothing forbidden by the Rule quoted.

Specifications Nos. 1 and 2, above, contain the only charges for consideration, and they *do not mention any person or persons as prisoners*, or give any idea of the number of these "prisoners."

There was only one "prisoner" in the place where the offences are alleged to have occurred—Thomas A. Madigan, charged with manslaughter (p. 19, l. 8), and he testified that he had no conversation with Broadhurst (p. 9, l. 7). Thomas A. Madigan was the only "prisoner" that could be called upon to make a defense. The other so-called "prisoners" were held as material witnesses, only, without charge of any kind and could not be called upon for defense.

September 28, 1929, about 9:20 P. M., two automobiles were in collision on the Hudson County Boulevard in Jersey City. A man and woman in one car were killed. The four occupants of the other car, Thomas A. Madigan, the driver, his brother William Madigan, Edward J. Connors and James Dulligan, together with several other witnesses, were taken to the headquarters of the Hudson County Boulevard Police and there made

statements to the Police concerning the action. At 11:10 P. M. they were ready to be transferred to the 6th Precinct station house. The patrol wagon at 6th Precinct was 'phoned for, but it was out and finally arrived at 11:45. At 11:50 the four men named were taken to the 6th Precinct station house, where, after midnight (p. 85, l. 20), Thomas A. Madigan was charged with manslaughter and the other three who were residents of New York City were held as material witnesses and bail fixed at \$2,500 for Thomas A. Madigan and \$500 for each witness.

The automobile accident happened while the four young men were on the way to visit their friend, James A. Kirby who had very recently come to live in Jersey City. Kirby, attracted to the accident by the crash, accompanied the others to Boulevard Police Headquarters (p. 21, l. 16), and later went home and got a bank book, giving as the reason that he understood the bail would be \$2,500 for Thomas A. Madigan and \$500 apiece for the witnesses and he figured he could get Madigan's brother out on \$500 bail (p. 21, last 4 Q. & A). Arriving back at Headquarters, after the four men had gone to the 6th Precinct, Kirby met Broadhurst and said he would like to bail one of these fellows out. On his direct examination he testified that Broadhurst asked "What have you got to bail him out?" and Kirby said, "I have got a bank book with Seven hundred Dollars in it," to which Broadhurst replied, "That is no good," and thereupon, Kirby said, Broadhurst explained to him, "That these fellows would need a high-priced lawyer for this case. So, he says, 'I can get a lawyer that will take the case for you.' So I told him all right. So he called up this Feinberg" (p. 22).

On cross examination Kirby told the whole story of his talk with Broadhurst, as follows: That he, Kirby, got back to Headquarters, from his home, after midnight and that Broadhurst told him that generally a driver in a manslaughter case was held in \$2,500 bail and the witnesses would probably have to give \$500 bail each; that he had asked Broadhurst how much the bail would be; that he had not had any talk with anybody about bail until after he came back from home; that he had gone home to get his bank book thinking he might get one of the boys out; that he explained to Broadhurst that the Madigan boys' mother was an old lady at home and would be worrying about the boys and he wanted to get the brother out so he could go home and tell his mother that brother Tom was staying with Kirby in Jersey City, over night, and thus hide the fact of the accident from the mother; that he had told Broadhurst he was a stranger in Jersey City, didn't know anybody and asked Broadhurst to help him get Thomas Madigan's brother out on bail, and for the purpose of helping Kirby to get his friend (a witness, only) out on bail, Broadhurst called up Attorney Feinberg (pp. 29, 30, 31, 32). There was no mention, here, of "high-priced lawyer."

Although Kirby testified on direct examination that the talk about "high-priced lawyer" was with Broadhurst, alone, after the four men had left Headquarters, Connors, one of the four, testified that after the statements of the four had been taken Broadhurst, in Headquarters, told them, with Kirby present, that they needed counsel, "not no high-priced lawyer, some one that would put his hat on and go out and work for us" (p. 37, l. 13).

The next day, Sunday, Kirby met Feinberg and *then* engaged him to act as attorney for Thomas A. Madigan on the manslaughter charge, and also arranged to have Feinberg obtain the release of all four young men on bail, which Feinberg did on that Sunday. Kirby placed with Feinberg on that Sunday his bank book with deposits of \$756. and he testified that it was so placed as security to Feinberg for furnishing the bail (p. 23, l. 17). The next day, Monday, Kirby and Feinberg met in a New York bank, where Kirby withdrew \$750 and paid same to Feinberg. Kirby testified that he thought this \$750 was paid as security for the bail (p. 24, last 5 lines).

The hearing upon appeal came regularly before the Civil Service Commission on November 27, 1929. Commissioner Ruhlman sat for the Commission under the recently adopted Rules of the Civil Service Commission, empowering one Commissioner to sit for the Civil Service Commission, which Rules are authorized by the so-called Civil Service Act and amendments and supplements thereto.

Upon this appeal being called, Commissioner Ruhlman announced that the Commission was ready to hear a presentation of the facts in the case (p. 137). Broadhurst and all his witnesses and his attorney were present and ready to proceed. Broadhurst's attorney insisted upon a trial de novo (p. 138, top and 140, bottom). Strenuous objection was made to the taking of testimony, by Mr. Reich, attorney for the Boulevard Commission (pp. 138, 139, 140, 141, 142).

After argument on the question of taking testimony, it was agreed by attorneys for both parties

that the evidence adduced at the previous hearing should be submitted as the evidence on this appeal before the Civil Service Commission as though it had been there testified to (pp. 140, bottom and 141, top; 142, latter half, 143, centre). After this had been agreed to, the attorney for the Boulevard Commissioners, opposed any further evidence being introduced (p. 145, bottom).

In arguing before the Civil Service Commission Mr. Reich said, "After closing a case and the case being a matter of record we are satisfied to submit this record to your Honor for review and for decision. *It is not a question of testing the validity of your Board's ruling, regardless of what it may be, on this particular case and that record*" (p. 140, top).

Argument

The defendant contends that it was lawful for the Civil Service Commission to delegate one of its members to hear this appeal; that there was, in fact, a trial de novo by reason of the agreement by attorneys for the parties that the evidence adduced at the first hearing should be submitted as the evidence on the appeal to the Civil Service Commission; that upon the evidence so submitted, the Civil Service Commission was justified in its decision or judgment; and that the Boulevard Commissioner's finding, was without warrant or justification, because (1) the charge against Lieutenant Broadhurst, fails to state any facts on specifications upon which to find Broadhurst guilty, (2) the evidence clearly shows that Broadhurst did not name or procure counsel for defense of any prisoner, as charged, at the time

and place stated in the charge, or at any other time or place.

POINT I.

The Civil Service Commission is empowered under the law to make rules for the conduct of investigation, appeals, etc. and could lawfully delegate one member of the Commission with the power to conduct the hearing.

The Prosecutors now attack the finding of the Civil Service Commission on the ground that the hearing should be held before the entire Commission and not one member.

This was not only correct and legal but also consented to by the counsel for the Commission.

In arguing before the Civil Service Commission, Mr. Reich said, after closing the case and the case being a matter of record, "We are satisfied to submit this record to your Honor for review and for decision. It is not a question of testing the validity of your Board's ruling, regardless of what it may be, on this particular case and that record" (p. 140, top).

The Supreme Court in its per curiam opinion (p. 167) reported New Jersey Advance Reports, Vol. 8, page 643, said:

"It, therefore, appears that the irregularity of hearing before a single commissioner, if irregularity it was, was waived by the prosecutors. The statute, however,

we think is adequate to empower the commissioner sitting alone to hear the evidence. Section 64 of the Civil Service Act, (Comp. Stat. p. 3797) authorized the commission 'to make investigation, either sitting as a body or as a single commissioner, concerning all matters touching the enforcement and effect of the act and the rules and regulations prescribed thereunder * * * and in the course of such investigations each commissioner and the chief examiner shall have power to administer oaths and affirmations and to take testimony.' The testimony was, therefore, properly presented to Commissioner Ruhlman, sitting alone, and the order of the commissioner based thereon was, we think, in strict conformity with the statute."

The prosecutors not only failed to object but consented that the hearing be had before one commissioner and cannot now be heard to question that ruling.

POINT II.

The Civil Service Commission conducted the hearing in the manner prescribed by the statute.

The prosecutors argue that the hearing should be conducted de novo. The whole proceeding was conducted de novo as consented to by counsel.

After argument on the question of taking testimony it was agreed by attorneys for both parties that the evidence adduced at the previous

hearing should be submitted as the evidence on this appeal before the Civil Service Commission as though it had been there testified to (pp. 140, bottom) and (p. 141, top); (p. 142 latter half, 143 centre). After this had been agreed to, the attorney for the Boulevard Commissioners, opposed any further evidence being introduced (p. 145, bottom).

The prosecutors consented that the hearing be conducted on the record and even opposed the production of witnesses and cannot now allege that the Act was ultra vires or that the Commission did not conduct the hearing in accordance with the Statute. The fact that this evidence was all in the form of a typewritten record, submitted to and passed upon by all members of the Civil Service Commission, is equivalent to a hearing before the whole Civil Service Commission.

POINT III.

The Civil Service Commission did not err in setting aside the order of the Hudson County Boulevard Commission.

The Civil Service Commission having before it by agreement of counsel, as evidence taken on appeal all the evidence presented to the trial board, had a right to and did find that there was no evidence to warrant upon the charges preferred, the finding of guilty pronounced by the trial board.

There is no evidence upon which to base a finding of guilty upon the charges in the case.

POINT IV.

There was evidence before the Civil Service Commission supporting the findings of fact in the case.

There was before the Civil Service Commission all the evidence in the case, by the agreement of counsel heretofore mentioned, as fully as if the same had been repeated by witnesses in person before the Commission and the Supreme Court in the opinion in this case said:

“Without going into the remaining question in extenso it is sufficient to say that the evidence amply justified the conclusion reached by the respondents on the merits of the case.”

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court dismissing the Writ of Certiorari and affirming the Order of the Civil Service Commission restoring the defendant-appellee Broadhurst to the rank of lieutenant be affirmed.

Respectfully submitted,

GEORGE E. CUTLEY,
*Attorney for and of Counsel with
Defendants-Appellees.*

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New Jersey Court of Errors and Appeals

COUNTY OF HUDSON and the
BOULEVARD COMMISSION OF THE
COUNTY OF HUDSON,
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vs.

CIVIL SERVICE COMMISSION OF THE
STATE OF NEW JERSEY and
THOMAS J. BROADHURST,
Defendants-Appellees.

On Certiorari.

BRIEF FOR PROSECUTORS.

This is an appeal from the judgment of the Supreme Court, dismissing the writ of certiorari allowed by it to review the action of the Civil Service Commission in reversing the judgment of the Hudson County Boulevard Commission, finding Thomas J. Broadhurst, Lieutenant of the Hudson County Boulevard Police, guilty of violating the rules of the Department, and reducing him to the rank of a patrolman.

The Facts.

The book of rules of the Police Department of the Hudson County Boulevard Police, among other things, provides:

“Members of the Department are prohibited from recommending to prisoners any bondsmen or the employment of any person as attorney or counsel, and are forbidden to suggest or name any lawyer or other person

to a prisoner with a view to his defense at any time."

On Saturday, September 28th, 1929, in the evening, Thomas A. Madigan, while about to visit his friend, James Kirby, and while operating an automobile containing Thomas A. Madigan, Madigan's brother, one Edward Conners and one James Dulligan, crashed into another automobile while driving on the Hudson County Boulevard in Hudson County, near the home of his friend, James Kirby. The accident resulted in the death of two people. Madigan, together with the other occupants of the Madigan car, were immediately arrested and brought to the headquarters of the Hudson County Boulevard Police.

The accident happened at about 9:30 in the evening. The prisoners arrived at the Hudson County Boulevard Police Headquarters about 10 P. M. and remained there until about 12 P. M. when they were transferred to the Seventh Precinct Police Station of Jersey City, where they were searched and locked up, Madigan on a charge of manslaughter and the other three as material witnesses.

Kirby, attracted by the crash of the accident, arrived on the scene of the accident before Madigan and the others were taken to the Boulevard Police Headquarters, and when they were arrested went with them to Boulevard Police Headquarters. At Boulevard Police Headquarters, Lieutenant Broadhurst took the statements of Madigan and the other occupants of his car concerning the accident, and while thus at Police Headquarters with the prisoners, Lieutenant Broadhurst informed Kirby that the bail for Madigan would be Twenty-five hundred (\$2500) Dollars, and that the bail for the other witnesses would be Five hundred (\$500) Dollars each, or a total bail requirement of Four

thousand (\$4,000.00) Dollars. Kirby, thinking he could bail at least one of the witnesses went home and brought back to Boulevard Police Headquarters his savings bank book, showing a credit of Seven hundred and fifty-six (\$756) Dollars. He returned to Boulevard Police Headquarters shortly after twelve o'clock. The prisoners had then already been transferred to the Seventh Precinct Police Station. He met Lieutenant Broadhurst there and had a talk with him and told Broadhurst that he would like to bail one of those fellows out, whereupon Broadhurst said "What have you got to bail him out?" whereupon Kirby said "I have got a bank book with Seven hundred (\$700) Dollars in it," whereupon Broadhurst said "That is no good" and explained to Kirby that these fellows would need a high priced lawyer for this case and then said to Kirby "I can get a lawyer that will take the case for you." Whereupon Kirby said to Broadhurst "Alright" and thereupon, Broadhurst, using the Department telephone called on that phone a lawyer by the name of Jack Feinberg. The telephone call was made in the presence of Kirby, and Broadhurst talked to Feinberg over the telephone in the presence of Kirby and explained the case over the phone.

Having thus talked over the telephone Broadhurst told Kirby that Feinberg had said that he could not come down to bail him out that night but that he, Feinberg, would meet Kirby in the morning at Kirby's house and would go down and bail these fellows out. Kirby then made arrangements with Feinberg that they should meet on Sunday morning—the next day. This was done through Broadhurst over the telephone. After Kirby found out that Feinberg could not bail his friends that night, Broadhurst suggested to Kirby that it would be best to go over to the Seventh

Precinct Police Station and advise his friends that they would have to stay over night and Broadhurst thereupon offered to take and did take Kirby from the Hudson County Boulevard Police Headquarters to the Seventh Precinct Police Station in his police motorcycle, where Kirby had a conversation with his friends while they were locked up. On Sunday morning Feinberg arrived at the home of Kirby. Both thereupon went to Feinberg's office and from there they went to the home of Feinberg where in the presence of Jesse Feinberg, brother of Jack Feinberg, the case was again explained and Kirby thereupon signed over the bank book for Seven hundred and fifty-six (\$756.00) Dollars to Feinberg as security for the bail of his friend, receiving nothing in return for the bank book excepting the promise of Mr. Feinberg to bail the prisoners and to meet him, Kirby, at Fourteenth Street and Eighth Avenue, New York City, to draw out Seven hundred and fifty (\$750.00) Dollars next morning,—being Monday.

Nothing was said at that time that the case would cost Kirby Seven hundred and fifty (\$750.00) Dollars as a counsel fee for these boys, but the money was put up as security for bail for Madigan.

On Monday morning Kirby met Feinberg at the bank as agreed and withdrew the sum of Seven hundred and fifty (\$750.00) Dollars which he gave to Feinberg, and at that time Feinberg handed to Kirby a receipt which Kirby thought was for security for bail but which, upon reading, he found to be made out as in payment of a fee. The receipt was signed by Feinberg on Monday morning in the presence of Kirby, after Feinberg had received Seven hundred and fifty (\$750.00) Dollars in cash. It reads:

“Received of James Kirby the sum of Seven hundred and fifty (\$750.00) Dollars,

as fee in *re* State of New Jersey *v.* Thomas Madigan. Charge—manslaughter. Dated September 30th, 1929. Signed, Feinberg & Feinberg, by Jack Feinberg.”

Kirby did not know Feinberg prior to September 28th, 1929, when his friends were arrested. He had never heard of Feinberg, and Feinberg was recommended by Broadhurst. The arrangements made by Lieutenant Broadhurst with Feinberg over the telephone were for the meeting between Feinberg and Kirby at Kirby's house on Sunday morning. Feinberg told Kirby to advise anybody who asked him about Feinberg's appearance in the case that they were old friends.

The bail was Four thousand (\$4,000) Dollars, Twenty-five hundred (\$2,500.00) Dollars for Madigan, and Five hundred (\$500.00) Dollars apiece for the witnesses. Feinberg put that bail up on Sunday and got all out on Sunday morning. Kirby was there when they were thus bailed and thereafter Kirby met Feinberg on Monday to transfer the money to him.

Kirby talked to no one but Lieutenant Broadhurst about getting the boys out on bail. He was a stranger in the neighborhood and didn't know anybody. He heard everything that Broadhurst said on the telephone. He was immediately adjacent to Broadhurst while he talked over the telephone.

Broadhurst made the appointment for the meeting on Sunday morning.

The Board of Boulevard Commissioners found Lieutenant Broadhurst guilty as charged and reduced him to the grade of patrolman to take effect November 12th, 1929 (p. 135). From this judgment Broadhurst (under Paragraph 144-80, 2 Cum. Supp. 24, p. 2584) appealed to the Civil Service Commission for a rehearing. This Section provides that upon such appeal to the Civil

Service Commission, the Civil Service Commission shall fix a time and place for hearing of the case, and that at the hearing the respective parties may be represented by counsel and the *Commission* shall hear witnesses and receive all other competent evidence produced, and determine the case upon such evidence as may be presented, and shall have power to compel by subpoena the attendance of witnesses and production of evidence.

The appeal was brought to hearing in due course, but instead of being heard by the Commission as provided by Section 80, it was heard by Mr. Ruhlmann, one of the Commissioners, on November 27th, 1929. The proceedings before Commissioner Ruhlmann begin on page 137 of the record. After the hearing before the Commission opened, a discussion arose as to how the hearing should be conducted, and it was finally agreed by Mr. Benny, representing the defendant-appellee, Broadhurst, and by Mr. Riech, then representing the Boulevard Commission, that the stenographic trial record of the hearing had before the Commissioners should be used by Mr. Ruhlmann in deciding the case, and counsel for Broadhurst and for the Boulevard Commission thereupon summed up before Commissioner Ruhlmann without the examination of any witnesses whatsoever, their summation being addressed solely to the record of the trial had before the Boulevard Commission. The case having been closed Commissioner Ruhlmann made a report thereon to the Civil Service Commission (pp. 158-159) in which report Commissioner Ruhlmann among other things said: "I fail to find anything in the proceedings which indicates that Lieutenant Broadhurst did solicit or procure counsel for the persons concerned in the accident within the meaning of the orders of the Police Manual" and thereupon recommended that the action of the Boulevard Com-

mission in reducing Lieutenant Broadhurst to the rank and pay of a patrolman be set aside and an order be entered restoring the said Broadhurst to his former pay and position as Lieutenant of Police.

The Civil Service Commission thereupon made an order thus restoring the said Broadhurst to the rank and pay of Lieutenant of Police as of November 12th, 1929 (p. 161). This order recites that the Commission has received and considered the report of the *sitting Commissioner* and that thereupon the order in question was adopted by unanimous vote.

It is this order restoring Broadhurst to his office of Lieutenant of Police which is brought up for review by this writ of certiorari.

Broadhurst does not deny the story as told by Kirby. In fact he distinctly testifies that he made the arrangements as the result of which Feinberg met Kirby on Sunday morning, September 30th, 1929, for the purpose of bailing Madigan and his companion (p. 82, l. 1).

Kirby thereafter made arrangement with Thomas Madigan whereby Madigan relieved Kirby of the payment of the \$750.00 and arranged to pay it himself.

No services were rendered by Feinberg for \$750.00 paid to him, excepting that he stood bail for Thomas Madigan on the charge of manslaughter in the police court and also there became responsible for the appearance as witnesses of the other three occupants of the car which had been driven by Thomas Madigan in the accident.

Argument.

It is the contention of the prosecutors that it was unlawful for the Civil Service Commission to delegate to one of its members the duty of hearing

this appeal, that upon the hearing of the appeal there should have been a trial *de novo* and that the consent of counsel to the submission of the case to the sitting Commissioner upon the trial record of the trial had before the Boulevard Commission could not invest the Civil Service Commission or the sitting Commissioner with power thus to hear the appeal. It is further the contention of the prosecutors that even conceding the legality of the delegation of power to hear the case to Commissioner Ruhlmann and the legality of the method of the trial adopted by Commissioner Ruhlmann in accepting the trial record of the case as heard before the Boulevard Commission that the judgment of the Commission upon the facts of the case as presented by this trial record, is without warrant in the law, contrary to the evidence produced before the Boulevard Commission and is unsupported by any facts found in the record of the trial had before the Boulevard Commission.

POINT I.

The Civil Service Commission could not lawfully delegate to one member of the Commission the power to conduct the hearing.

The appeal to the Civil Service Commission is authorized by Section 24 of the Civil Service Commission Act (Laws of 1908, p. 250, C. S., p. 3804, as amended, Laws of 1917, p. 797). This Section as originally enacted (C. S., p. 3804) forbids the removal, discharge or reduction in rank or station of any person in the competitive or non-competitive class except upon written charges preferred and hearing had thereon, but this Section as originally enacted did not carry an appeal to the Civil Service Commission. In 1917 (Laws of 1917, p.

797), the Section was amended to read as it now reads, by providing for an appeal by a person in the competitive or non-competitive class who has been discharged, removed or demoted to the Civil Service Commission. As to an officer or person in the competitive class, the amended Section provides as follows:

“If such person so as aforesaid ordered to be removed, discharged, fined or reduced shall within ten days after notification as aforesaid (notification of judgment against him) apply for investigation of the charges as aforesaid by the *Civil Service Commission*, said Commission shall fix a time and place for a hearing of the case, of which written notice shall be served upon the appointing officer of the Board and the person sought to be relieved, discharged, fined or reduced, * * * and the *Commission shall hear witnesses* and receive all other competent evidence produced, and determine the case upon such evidence as may be presented. * * * If on such hearing the Civil Service Commission shall disapprove of such order or removal, discharge, fine or reduction, the same shall be and remain of no effect * * *.”

As to an officer, clerk or employee in the non-competitive class, the amended Section provides:

“Any officer, clerk or employee of the non-competitive class of the classified Civil Service removed, discharged or reduced as aforesaid shall have the right of appeal to the Civil Service Commission under such rules as said Commission shall prescribe and if such appeal shall be made in accordance with said rules the *Civil Service Commission* shall proceed to investigate and hear the charges on which such removal, discharge or reduction was based *in the manner hereinbefore provided for the hearing in the case of an officer, clerk or employee of the competitive class* and if, on such hearing the Civil Service

Commission shall disapprove of such removal, discharge or reduction, it shall make an order for the reinstatement of such officer, clerk or employee in his place in the non-competitive class of the classified Civil Service, and he shall forthwith be reinstated in accordance with said order.”

The amended Section then further provides:

“Nothing in this act shall be construed to alter, amend or in any wise change, amend or affect the laws of this State respecting the police or fire departments in any municipality and regulating the tenure and terms of officers and employees in said departments; provided, however, that nothing herein contained shall be construed as denying any officer or employee of police or fire departments the right of an appeal to the Civil Service Commission in the manner *as herein provided.*”

The appeal of this police officer was taken pursuant to the Section from which excerpts have just been made. This Section distinctly provides that the hearing shall be held by the Commission and it was therefore unlawful for the Commission to delegate to Commissioner Ruhlmann the right to conduct the hearing in this case.

Oakland v. Bayonne, 98 N. J. L. 806;
Herbert v. Atlantic City, 87 N. J. L. 98.

It may be argued on behalf of the defendants that this point is not well taken because of Section 8 of the Civil Service Commission Act (3 C. S., p. 3797, Section 64). That Section grants power to the Commission sitting as a body or through a single Commissioner to make *investigations* concerning:

- (a) All matters touching the enforcement and effect of this Act
- (b) The rules and regulations prescribed thereunder

(c) Concerning the action of any Examiner or subordinate of the Commission and any person in the paid employ of this State or any municipality that may hereafter adopt the provisions of this act, in respect to the execution of this act,

and in the course of such investigations each Commissioner and the Chief Examiner shall have power to administer oaths and affirmations and to take testimony.

It is submitted that this Section is not broad enough to reach the trial of an appeal, such as the one now before the Court, and that this Section was intended to regulate not more than what the express language of the Section indicates, and it was undoubtedly owing to the limited power granted by this Section and the absence of any power to hear appeals in cases like the instant case that Section 80-24, hereinbefore first referred to, was amended in 1917; and in view of the fact that Section 64-8 (C. S., p. 3797) does give to a single Commissioner power to hold *investigations* concerning the matters in that Section referred to, it is very significant that when Section 80-24 (Cum. Supp. of 1924, p. 2583) was amended in 1917, the Legislature saw fit expressly to grant the power to hear these appeals to the Commission as a Commission and did not grant power to the Commission to delegate their authority to a single Commissioner and did not provide that a single Commissioner might sit and hear appeals.

To my mind these facts constitute a most cogent reason,—independent of the meaning of this Section which must be drawn from the plain language of the Section,—to hold that the power to hear these appeals is not now and never was vested in a single Commissioner.

In the case of *Oakland v. Bayonne*, 98 N. J. L. 806, Mr. Justice Kalisch speaking for an undi-

vided Court of Errors in reversing the Supreme Court said:

“As the express language of the statute is that ‘after due hearing the Commission shall decide, etc.’, there can be no question but what it was intended that the matter would be heard by all the members of the Commission or at least by a quorum.”

In the case just cited the Court was considering an order made by the State Board of Conservation and Development in which power had been expressly conferred upon the Commission as a Commission to act.

In *Herbert v. Atlantic City*, 87 N. J. L. 98, it was held that where a power is given to a commission and nothing in the Act indicates that the power is to be delegated to a single member thereof, such delegation cannot lawfully be made.

Nor could the parties to this proceeding either by express or implied agreement confer jurisdiction upon Commissioner Ruhlmann to hear this case. *Oakland v. Bayonne*, 98 N. J. L. 806.

In *Oakland v. Bayonne* it was argued that since the parties did not object to a single member sitting that the objection must be deemed to have been waived. The Court, however, disposed of this contention, saying at page 816:

“The fact that the hearings were had and conducted without objection by counsel of appellants and therefore their consent thereto will be implied, is of no importance. Consent to go on before a lesser number than a quorum cannot confer jurisdiction which the statute prescribes shall be exercised by the Board. Jurisdiction therefore cannot be lawfully conferred by consent of the parties or of counsel upon a single member of the Board or any number less than a quorum for such action would be in defiance of an express statutory behest that the Board shall hear and determine the merits of the application in the manner prescribed by the statute.”

POINT II.

The Civil Service Commission did not conduct the hearing in the manner prescribed by the statute.

The statute prescribed:

“The Commission shall hear witnesses and receive all other competent evidence produced and determine the case upon such evidence as may be presented.”

2 Cum. Supp. 24, page 2583, Para. 144-80.

Under the statutory procedure thus set out it was the duty of the Civil Service Commission to hear the case *de novo*.

County of Essex v. Civil Service Commission, 98 N. J. L. 671;

Martin v. Smith, 100 N. J. L. 50;

Oakland v. Bayonne, 98 N. J. L. 606.

In the case of the *County of Essex v. Civil Service Commission*, 98 N. J. L. 671, the Supreme Court construed the section dealing with appeals to the Civil Service Commission. In that case the Civil Service Commission in reviewing an order of dismissal made by a County Supervisor heard the case *de novo* and reversed the order of dismissal. This procedure was expressly sustained by the Supreme Court as the proper method of procedure upon appeal to the Civil Service Commission.

And this has been the practice of the Civil Service Commission in hearing appeals. Thus in *Martin v. Smith*, 100 N. J. L. 50, the order of the Commission attacked was made as *de novo* consideration of the case by the Civil Service Commission.

The Civil Service Commission is a special statutory tribunal and its powers and duties must be found within the language of the Act under which the Commission is created.

If it exercised other powers and operated in a way contrary to that indicated in the statute, the action must be deemed *ultra vires* and void.

In the instant case Commissioner Ruhlmann, instead of trying the case *de novo* merely reviewed the record below and no witnesses were called, although the statute distinctly provides that the Commission *shall hear witnesses*. The case was treated by Commissioner Ruhlmann not as a trial or hearing *de novo* but as a *review upon appeal*. Such procedure is not contemplated nor is such power granted by the statute. Thus Mr. Justice Kalisch in *County of Essex v. Civil Service Commission* (*supra*) says:

“By Section 24 of the statute of 1917, the hearing before the Civil Service Commission is expressly made an *independent* investigation and trial, wholly governed by the testimony *there* adduced. *The testimony taken out the hearing before the County Supervisor finds no proper place at such trial and is not a proper subject for the Civil Service Commission to review.* The statute makes it incumbent upon the Civil Service Commission to determine the case upon the testimony taken at the hearing before it.” *County of Essex v. Civil Service Commission*, 98 N. J. L. 671, at pages 674-675.

The statute thus providing for a trial *de novo* could the parties waive their right to trial *de novo* and by consent have the appeal heard as an appeal or as a review of the trial record sent up from the Boulevard Commission?

Oakland v. Bayonne, 98 N. J. L. 806, page 816, is opposed to the notion that jurisdiction can be conferred upon the Civil Service Commission to hear

an appeal such as was presented in the instant case without hearing witnesses and merely by reviewing the record of the proceedings. In other words, the consent of the parties cannot convert an otherwise *ultra vires* act of the Board into *intra vires* action. The requirement that witnesses should be heard and that other competent evidence should or may be received seems to make the receipt of the trial record by Commissioner Ruhlmann as the only data upon which he decided the case an illegal act *ultra vires* the Civil Service Commission.

POINT III.

If it be conceded that the proceedings before the Civil Service Commission were regular in every other respect, the Civil Service Commission erred in setting aside the order of the Hudson County Boulevard Commission demoting Officer Broadhurst because the evidence before the Commission as contained in the trial record upon which it acted reasonably supported the order of demotion made by the Boulevard Commission.

As before indicated the Civil Service Commission did not hear the case of this defendant *de novo* but on the contrary *undertook to review* the action of the Boulevard Commission in arriving at its findings that defendant was guilty.

It is settled beyond question that the Supreme Court in reviewing the decision of a statutory tribunal upon questions of fact will not reverse that tribunal if there was any evidence before the tribunal reasonably supporting the decision made by the tribunal.

Alcutt v. Bd. of Police Commissioners,
66 N. J. L. 173;

Riley v. Jersey City, 64 N. J. L. 508;
Crane v. Jersey City, 90 N. J. L. 109;
Martin v. Smith, 100 N. J. L. 50;
Hosie v. Preiskel, 3 N. J. Misc. 494;
Zover v. Turner, 144 Atl. 608.

By analogy if the Civil Service Commission undertakes to sit as a court of review it should be bound by the same rules governing the review as will bind the Supreme Court in like cases.

In *Martin v. Smith* (*supra*), the Court said:

"If the court were not circumscribed and limited in its duty in this instance by the well settled rule of law applicable to cases of this character, it might properly be urged to weigh the testimony, and if possible reach a conclusion different from that which has been reached by the trial tribunal. But the separate rule of law is that if there be evidence upon which the trial tribunal may reasonably found its conclusion of guilt or innocence this court will not reverse the judgment by weighing the testimony for the purpose of forming an independent judgment. If the judgment of the trial court can be fairly supported by the trial the duty of this court is at an end so far as further investigation is concerned."

There was in the case at bar sufficient evidence before the Hudson County Boulevard Commission to warrant that Commission in finding the defendant-appellee Broadhurst guilty as charged. The facts are not in dispute and the statement of those facts as found at the head of this brief is taken from the trial record.

The defendant-appellee Broadhurst actually admitted that he had made the arrangements whereby Feinberg met Kirby to go bail for Madigan and his associates (p. 82).

The Boulevard Commission was therefore justified in finding the defendant-appellee Broadhurst guilty as charged and the Civil Service Commis-

sion hearing the case as a reviewing tribunal was not justified in reversing the judgment of the Boulevard Commission.

POINT IV.

There was no evidence before the Civil Service Commission supporting the findings of fact in this case.

The sitting Commissioner Ruhlmann made a lengthy report to the Commission after having received no evidence and after having considered the record of the trial which defendant-appellee Broadhurst had had before the Boulevard Commission. According to this report Commissioner Ruhlmann decided the case "from the evidence presented in the proceedings before the Boulevard Commission and the *information* gained from counsel and the appellant" (p. 158, fols. 30-40). Certainly there was no warrant for Commissioner Ruhlmann to obtain information concerning this case from counsel or from the appellant and take such information into consideration in arriving at his judgment.

Upon such a hearing as this was, namely, a review of the proceeding before the Boulevard Commission, Commissioner Ruhlmann was bound to accept as true the evidence adduced in support of the finding by the Boulevard Commission. Instead of doing so Commissioner Ruhlmann in his report absolutely ignores the evidence produced in support of the finding by the Boulevard Commission and arrives at a conclusion *all his own*, as a result of which he says: "I fail to find *anything in the proceedings* which indicates that Lieutenant Broadhurst did 'solicit or procure' counsel for the persons concerned in the accident within the meaning of the orders in the Police

Manual, or that he did anything other than endeavor as a *good officer serving the public* to give information and aid to the *citizen in distress*' (p. 159, fol. 35).

A reading of Commissioner Ruhlmann's report shows that he absolutely ignores the evidence offered for the prosecution, rests his findings solely on the evidence of the defendant, Broadhurst, and yet in doing so ignores the admissions made by this defendant that he did call Feinberg on the telephone and that he did make the arrangements which led to a meeting between Feinberg and Kirby, the bailing of Madigan and his associates and the transfer of \$750.00 of Kirby's hard earned money to the pocket of Feinberg.

The method adopted by Commissioner Ruhlmann in examining the evidence produced before the Boulevard Commission leads to a result which is absolutely contrary to the weight of that evidence and leads to a finding without any basis in fact.

CONCLUSION.

It is respectfully submitted that the judgment of the Supreme Court, dismissing the Writ of Certiorari and as well the Order of the Civil Service Commission restoring the defendant-appellee Broadhurst to the rank of Lieutenant with pay, should be reversed, set aside and for nothing holden.

February Term, 1931.

Respectfully submitted,

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Of Counsel with Prosecutors-Appellants.

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Mandal, or that he did nothing other than endeavor as a good officer to give the public the information and aid to the citizens of Detroit" (p. 134, fn. 55).

A reading of Commissioner Robinson's report shows that he essentially ignores the evidence of fact for the prosecution, rests his finding solely on the evidence of the defendant Broadhurst, and yet at the same time ignores the admissions made by the defendant that he did call Fenberg on the telephone and that he did make the arrangements which led to a meeting between Fenberg and Kirby, the father of Madeline and his associates and the transfer of \$7,000 of Kirby's hard-earned money to the pocket of Fenberg.

The method adopted by Commissioner Robinson in examining the evidence produced before the Board of Prison Commissioners leads to a result which is absolutely contrary to the weight of that evidence and leads to a finding without any basis in fact.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court, granting the Writ of Certiorari and as well the Order of the Civil Service Commission restoring the defendant-appellee Broadhurst to the rank of Lieutenant with pay, should be reversed, set aside and by nothing held.

February Term, 1931.

Respectfully submitted,

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