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# Judge Bars Statement of a New Witness in the 'Harlem

By LACEY FOSBURGH

State Supreme Court Justice Joseph A. Martinis said yesterday that he would not permit the statement of a new witness in the "Harlem Four" case—a statement that allegedly characterizes some of the prosecution's evidence as untrue—to be presented to the jury at the scheduled fourth trial. It is inadmissible as evidence, the judge said.

The defense maintains that the new witness, Herman Joseph, a senior probation officer, has told a judge, two lawyers and a Democratic district leader that a prosecution witness once told that, in effect, both his test among and that of the other chief witness against the defendants was built on lies.

According to the defense, Mr. Joseph also told the four persons that he would "deny" his statement if he was ever questioned about it officially.

Yesterday Mr. Joseph appeared in court for the first time—at an evidentiary hearing—after, he said, spending "six to nine hours" discussing the case with the Manhattan District Attorney's office. He denied at the hearings that he ever had any information that indicated that any of the prosecution's evidence was untrue.

### Conversation Recalled

He did, he said, have a conversation once in 1965 with a witness in the case. His name was Ollie Roe, he recalled, but Roe never confessed anything to him, except, of course, what he said at all the trials.

His earlier statements were false, he said. "I'm guilty of not being exactly precise in talking to people," he said, and then he added: "But what I'm saying now is true."

Justice Martinis was leaning across his bench to hear the witness, who spoke almost in a whisper and interrupted him-

self frequently to take a drink of water.

Then, finally, the judge interrupted him, saying that "strictly speaking" he knew that whatever Mr. Joseph had told people out of court would not be admissible at the fourth trial, but that "I want it all to come out in public now."

He said it was inadmissible as evidence because it constituted hearsay, not sworn statements.

### Case Dates From 1964

The four defendants in the case are charged with the murder in 1964 of Mrs. Margit Sugar, a Harlem shopkeeper. Their first trial in 1965 resulted in a conviction that was later overturned. Their second and third trials both ended in hung juries.

Last March, when the defense was urging the judge to dismiss the case and the prosecution was pressing a fourth trial, the defense disclosed to the

court what it called "new information" it had from Mr. Joseph.

Among other things, it presented the transcript of what it said was a secretly recorded conversation between the defense attorney, Lewis M. Steel, and Mr. Joseph. In it, the probation officer said that Ollie Roe, the only prosecution witness to place the defendants at the murder scene, once told him that the only person he saw there was, not any of the defendants, but Robert Barnes Jr., the other major prosecution witness.

Assistant District Attorney Lehner, who is in charge of the "Harlem Four" case, has said that Mr. Joseph's story, upon investigation, "corroborates" the prosecution's case.

Under lengthy questioning from Mr. Steel, Mr. Joseph said over and over there had been nothing of any consequence about his conversation with the eyewitness. In fact, he assert-

See this file 1 Apr 72, and earlier.

## Four' Case

ed, Roe insisted on the defendants' guilt. He did acknowledge under questioning, however, that after this conversation, he had joined a group active in promoting the defendants' cause because he believed in their innocence.