

**START**

350

**CASE**

CASE 350

# INDEX OF WITNESSES.

	D.	G.	R. D.	R. I.
Robert J. Hibbard	2	10	15	
Richard W. Abbott	17	21		
Norman J. Fitzsimmons	22	30	32	
Harry McCutcheon	33	37		

CASE # 350



# 464

COURT OF GENERAL SESSIONS OF THE PEACE,  
City and County of New York.

-----X  
THE PEOPLE,  
vs.  
THEODORE CASSON.  
-----X

464

Indictment filed the 4th day of March, 1903.  
Indicted for Sodomy.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEY JAMES R. ELY;  
For the Defendant, Messrs. PENTECOST & CAMPBELL.

Tried before Hon. John W. Goff, R., and a jury on the  
6th day of April, 1903.

Thomas W. Osborne,  
Official Stenographer.

CASE # 350

A jury is empaneled and sworn.

Mr Ely opens the case in behalf of the People.

ROBERT J. HIBBARD, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q You are an officer connected with the Municipal Police Force of the City of New York and were so connected on the 21st and 22nd day of February, 1903? A I was.

Q And attached to what inspection district? A The 4th.

Q And how long had you been so attached? A Since the 19th of December, 1902.

Q On whose staff are you? A On the staff of Acting Inspector Walsh.

Q You were so attached then on the 21st and 22nd day of February, 1903? A I was.

Q State where you went on the night of the 21st day of February, 1903? A I went to the premises on the northeast corner of 55th Street and Broadway known as No. 1730 Broadway.

Q And what are the premises known as, if they have any designation? A The building is known as the Ariston Apartment House and the basement of the premises is occupied as a Turkish bath establishment and is known as the Ariston Baths.

CASE # 350



Q What part of the premises of 1730 Broadway did you go into on this evening? A The bath portion, located in the basement.

Q Did you go alone or were you accompanied by others? A I went alone to the premises. I saw other officers in the premises during my visit there.

Q These Ariston baths are located in the County of New York, are they? A They are.

Q At 1730 Broadway in the City and County of New York? A 1730 Broadway in the City and County of New York.

Q About what time on the evening of the 21st of February, 1903, did you go to these premises? A I went there at ten o'clock that night.

Q What did you do? A I entered the premises and I purchased a bath, paid one dollar.

Q A ticket? A No, I received no ticket. I was assigned to a valuable box and the man behind the desk directed a rubber to show me to a room, place to undress. I undressed--- first I placed my valuables in the valuable box and undressed and entered the hot room and was scrubbed, and then returned to the dressing and cooling rooms, and there remained until the hour of 1:45.

Q I show you this paper and I ask you what it is: Did you ever see that paper before? A I did. It is---

Q What is it? A It is a rough sketch of the premises--

CASE # 350

Q What part of the premises of 1730 Broadway did you go into on this evening? A The bath portion, located in the basement.

Q Did you go alone or were you accompanied by others? A I went alone to the premises. I saw other officers in the premises during my visit there.

Q These Ariston baths are located in the County of New York, are they? A They are.

Q At 1730 Broadway in the City and County of New York? A 1730 Broadway in the City and County of New York.

Q About what time on the evening of the 21st of February, 1903, did you go to these premises? A I went there at ten o'clock that night.

Q What did you do? A I entered the premises and I purchased a bath, paid one dollar.

Q A ticket? A No, I received no ticket. I was assigned to a valuable box and the man behind the desk directed a rubber to show me to a room, place to undress. I undressed--- first I placed my valuables in the valuable box and undressed and entered the hot room and was scrubbed, and then returned to the dressing and cooling rooms, and there remained until the hour of 1:45.

Q I show you this paper and I ask you what it is: Did you ever see that paper before? A I did. It is---

Q What is it? A It is a rough sketch of the premises--

CASE # 350



perhaps a little out of proportion, but otherwise it is a fairly-- gives a fairly good idea of the location of the different rooms in the bath.

Q Do you know who made that? A I made it myself.

Q At my suggestion? A At your suggestion.

Q That is a fairly good representation of the Ariston bath places-- of the Ariston baths? A I say fairly good. It gives the relative locations of the rooms.

MR. ELY: I offer this paper in evidence.

THE COURT: What do you say, Mr. Pentecost.

MR. PENTECOST: I have no objection.

THE COURT: Mark it.

The paper is received in evidence and marked  
People's Exhibit A.

BY MR. ELY:

Q Now, just describe the location of the rooms there, and how you entered-- stand up and show it to the jury?

A This will be the location, 55th street here and the north is this way, and the east south and west (indicating). The entrance to the baths is through this door into the office. Immediately in the rear of the office is a room occupied by a sideboard and ice box; back from this room runs a hall leading to the bath proper with a turn here, and here is the scrubbing rooms with the hot room back here, and the steam room

CASE # 350

5  
to the left of that. This is the swimming pool. The dressing rooms are off here, and there are four or five dressing rooms located here, and a few dressing rooms in here. This room, and this room, and the space between the rooms here and the space between the rooms there are occupied by cots which are used by the bathers to lay on while they are cooling off after their bath. This (indicating) is the room in which the alleged crime took place; in the southeast room, located in the southeast corner of the premises. There were seven cots along this wall with a window here looking into 55th street and the floor of the premises is located about two feet below the level of the street.

Q What, if any, window is there in the easterly room?

A There is one window opening into 55th street, about on the level with the street.

Q Now, you get so far as to state that you went into the premises, paid for your bath, gave up your valuables--- go on and state what you did? A I undressed and entered the hot room. I was scrubbed and took a shower and then I entered the room behind the office. I purchased a cigar and spent the remainder of the time circulating around in the different rooms of the bath, different cooling rooms of the bath.

Q Different cooling rooms? A Yes, sir.

Q How many cooling rooms are there there on the premises?

A One, two, three, four-- four cooling rooms and parlor.

CASE # 350



There are three beds in the parlor and some chairs.

Q The parlor is along 55th street? A Yes, sir, adjoining the office.

Q What? A Adjoining the office, but between the office and the southeast room.

Q The parlor adjoins the southeast room? A Yes, sir.

Q You say you undressed yourself and took your bath; after your bath what if anything did you have on your person?

A I had a sheet around my person.

Q Did you see the defendant here, at the premises, these Russian bath premises on the 21st of February, 1903, and on the morning of the 22nd of February, 1903?

A I did.

Q State the circumstances under which you saw this defendant? A I saw this defendant at about the hour of 12:50 on the morning of the 22nd of February. I saw him enter the southeast room of these premises, he passed by myself and by Officer Fitzsimmons. We were standing together.

Q Officer Fitzsimmons and yourself were standing together at the time? A Yes, sir, and he passed by us and stood opposite the first cot from the southerly wall of the building in this southeast room. A man by the name of John Rogers was lying on the cot, on the first cot in this room. The defendant stood with his back up against the westerly wall. He opened the sheet that was around his person and he was oth-

CASE # 350

erwise naked. His penis was in a state of erection. I saw the defendant take one step forward and the man Rogers who laid on the first cot sat up, moved his body down to the end of the cot and sat on the end of the cot and leaned over and placed the penis of this defendant in his mouth. He moved his head backwards and forwards and this defendant moved his body backward and forward and he went through indecent motions, and went through the motions of ejaculation; thereupon the defendant Rogers spit out upon the floor-- or the man Rogers, not the defendant-- the man Rogers spit out upon the floor and laid back on the cot. This defendant walked by me-- at least, he walked by Fitzsimmons and I walked back down ahead of him so that he walked into the doorway where the full flood of light came from the next room and I took a good look at the defendant to be able to identify him in the future. He passed out into the parlor and I remained in the southeast room.

BY THE COURT:

Q Before we go any further, was the defendant a customer there as far as you know? A So far as I know.

Q He was a bather? A Yes, sir, he was a bather.

Q Was this man Rogers a bather? A Yes, sir, he was a bather.

Q So that neither one of these men were attendants?

A Neither one of them were attendants.

CASE # 350



BY MR. ELY:

Q At the time that you say you saw the man Rogers spit, did you see the organ of this defendant, the genital organ of this defendant? A I did.

Q How was it? A It was not in a state of erection.

Q How large about is this extreme southeasterly room you speak of, should you say? A The room is about 18 or 20 feet long and about eight feet wide-- about that; I did not measure it.

Q How, if at all, was this room lighted? A There was no gaslight in the room. There was a door somewhat-- not quite as large as a double door and larger than a single door, between the parlor and this room.

Q Connecting? A Connecting. The light shone from the parlor which was lit by six or eight gas lights, into the southeast room, flood of light poured into the room.

Q And you saw distinctly this defendant, you say? A Saw distinctly.

Q And you are sure it was this defendant with whom this man Rogers performed, as you have stated? A I am positive.

Q And how far away were you from this defendant and Rogers at the time that you speak of? A Officer Fitzsimmons stood between myself and the defendant. My body touched that of Officer Fitzsimmons, and he was within perhaps six or

CASE # 350

eight inches of the defendant, while he was going through this act described.

Q Fitzsimmons was within six or eight inches?

A Yes, sir, only the person of Fitzsimmons separated me from the defendant.

Q About how far were you away? A I should judge perhaps two feet or a foot and a half, something of that sort, very close.

Q How were you facing the defendant and this man Rogers when this act was in progress? A I was facing, looking towards them; that is, they were-- their body was at right angles to mine.

Q And you say the defendant had his back against the westerly wall of this southeasterly room? A When he first entered, and then he took a step forward so as to bring himself closer to the cot, and the defendant Rogers sat on the cot.

Q I hand you this diagram People's Exhibit A and I ask you to mark upon it your relative positions with respect to the position of this defendant and this man Rogers at the time that this act was committed; mark it small enough-- put H for Hibbard? A Yes, sir.

Q R for Rogers and D for the defendant? A That was our relative positions. Rogers at the end of the cot. The

CASE # 350



defendant stood there, Fitzsimmons stood there, and I stood there.

Q State what those marks mean? A R stands for Rogers, he was seated on the edge of the first cot; D for the defendant; F for Officer Fitzsimmons and H for myself.

Q Now, Hibbard, there were other officers there?

A Yes, sir; there was present in the room at the time this act took place, in addition to those I mentioned, Officers Abbott and McGutcheon.

Q How soon after this act was committed, did you make the arrest? A This act was committed at about ten minutes to one and Inspector Walsh--

Q About what time? A About 1:45 when we placed this man under arrest.

BY THE COURT:

Q 1:45 A. M.? A Yes, sir, on that morning.

BY MR. ELY:

Q That is on the morning of the 22nd of February, 1903, at 1:45? A At 1:45, yes.

CROSS EXAMINATION BY MR. PENTECOST:

Q Where were the other officers at the time Fitzsimmons and you were standing at the place indicated by the initials F and H? A At the time this act is alleged to be committed,

CASE # 350

or before.

Q Yes, at the time the act-- A At the time the act was committed, Officer McCutcheon was sitting or standing, I am not sure which-- sitting on the edge of the third cot.

Q Will you put a mark there? A And Officer Abbott was between McCutcheon and myself. A and M.

Q M is McCutcheon? A Yes, sir, and A. is Abbott.

Q How many other persons were there in the room, at that time, at the time this alleged act was committed? A I did not count them, but I should judge about six or seven in addition to the officers.

Q I notice upon this diagram, according to your letters A and M, that there was a cot between where Officer Abbott and McCutcheon were standing or sitting, and the cot on which Rogers is alleged to have been sitting? A Yes, sir.

Q Was that cot occupied or unoccupied? A It was occupied, I believe-- by whom, I do not know.

Q And the other six or seven persons that you believe to have been in the room were disposed how, on cots? A Some lying on cots and others standing along the wall between myself and the door, and I think one or two persons over by the window.

Q Standing along the wall? A Along the wall, yes. They circulated in and out of the place all the time.

Q I suppose all clothed or unclothed in the manner you

CASE # 350



have described? A All naked with the exception of the sheet, every person in the room.

Q Do I understand you to say that this defendant came in through the door and passed along in front of you and Officer Fitzsimmons? A Yes, sir.

Q And walked to Rogers? A And walked to Rogers.

Q How much room was there between the end of the dots and the west wall? A About two feet-- a little narrow passage-way.

Q Then this defendant must have had about all he could do to pass? A Yes, sir, had to squeeze by to get through.

Q Squeeze by you and the other officer? A Yes, sir.

Q And were you standing there just observing what was going on? A Standing there observing the different acts being committed in the room.

Q Did you see any other acts of sodomy committed there at that time? A Not at the time this act was committed. I saw a crime of sodomy committed, act of sodomy committed about five or ten minutes before this and about five minutes afterwards.

Q How many did you see altogether in that room that night, if you can remember, about? A I saw fourteen-- 12 acts of sodomy, for which I made arrests; I saw altogether perhaps ten others that I was unable to identify the defen-

CASE # 350

dants.

MR. PENTECOST: I move that that part of his answer be stricken out, about his inability to identify the defendants.

THE COURT: Yes-- what other acts did you see?

THE WITNESS: I saw about ten other acts of sodomy for which no arrests were made.

MR. PENTECOST: I move to strike out the latter part of the answer.

THE COURT: Strike out the words "for which no other arrests were made."

BY MR. PENTECOST:

Q About how many persons were there moving about in the rooms constituting this bath place, between ten o'clock and the time the arrest of this defendant occurred? A At the hour of 1:45 there was about 75 people in the place besides the officers.

Q That is, at the time the defendant was arrested? A At the time the defendant was arrested, yes--- that was about the number all evening.

Q Was the defendant undressed at the time he was arrested? A Yes, sir.

Q Walking about? A Yes, sir, walking about.

Q Among the other customers of the bath? A Yes, sir.

CASE # 350



Q In what room was the defendant arrested? A When I saw the defendant he was in the room--

Q If you know? A I do not know in which room he was placed in custody. He was in custody when I saw him.

Q Where did you see him in custody? A In the room adjoining the bar room, or adjoining the room in which the ice box and the sideboard are located.

Q That is at the other end of the baths? A Yes, sir, opposite side of the baths.

Q Was he dressed at the time you saw him in custody?

A No.

Q Which officer had him in custody, if you know? A There was an officer on the door and that room was used to place all the prisoners in. There was an officer standing at the door, some officer whom I do not know, some officer from the 22nd precinct that accompanied the other officers there.

Q You do not know who made the arrest of this defendant, who actually put his hand upon him and told him he was under arrest? A Officer Garlin made the arrest of all the prisoners that were arrested there that night, was the technical officer in the case and arrested him on the identification of the officers that were sent in there to get evidence.

Q About how many arrests were made that night altogether?

A Fifteen arrests charged with sodomy, six arrests for disorderly conduct, and five persons arrested charged with viola-

CASE # 350

tion of the liquor tax law and one charged with keeping a disorderly house-- or four charged with liquor tax law.

Q Were you the officer who identified this defendant for the purpose of having him arrested? A I was one of them.

Q You said a moment ago you were not present when the defendant was arrested? A I was not the first man that identified him, somebody must have identified him before I did.

Q Then you were not the officer who identified him for the purpose of having him arrested, were you? A No, he---

Q That is sufficient---

RE DIRECT EXAMINATION BY MR. ELY:

Q Why were there no arrests made in the case of those ten other acts you mentioned?

MR. PENTECOST: I object.

THE COURT: I do not see that it is important to this case.

MR. ELY: No, except that it was brought out by the other side, and therefore they opened the door.

MR. PENTECOST: I object to any statement by the District Attorney.

BY MR. ELY:

Q You can state the circumstances under which you made

CASE # 350



this identification?

MR. PENTECOST: The answer to this question is objected to upon the ground that this is not the officer who identified him at the time he was placed under arrest.

BY THE COURT:

Q What did he do, if anything, in connection with the arrest of the defendant?

THE WITNESS: I stood at the door of this room that was located in the westerly part of the building, with the other officers who had been sent in the place to obtain evidence, and as the different men that were in the baths were walked by us, we picked out those against whom we had any complaint to make, and this defendant had already been put in a room that was set apart for the custody of the prisoners, and after the men had been allowed to go that we had no complaint to make against, the different men that were in this room were called out one by one and Inspector Walsh as each one was called out, said---

BY MR. ELY:

Q In the defendant's presence? A In the presence of this defendant-- said "Have you any complaint to make against this

CASE # 350

man, and I said "Yes," and Officer Fitzsimmons and the other officer said "Yes." Thereupon he was turned over to an officer of the 22nd precinct and sent to the station house in the patrol wagon.

RICHARD W. ABBOTT, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Police officer.

Q Connected with the Municipal police force of the City of New York? A I am.

Q Were you so connected on the 21st day of February, 1903, and on the 22nd day of February, 1903? A I was.

Q How were you attached? A I was attached to the 22nd precinct.

Q Still so attached? A No, sir, now attached to the First Inspection District office.

Q On the night of the 21st of February, 1903, where did you go, if anywhere? A I went to the Ariston baths 1730 Broadway.

Q And about what hour did you go there? A I went there about 10:30.

Q And you remained there until when? A Until about

CASE # 350



1:45.

Q Did you see this defendant there on that night? A I did.

Q Just state what you did when you got there, and when you saw the defendant, and under what circumstances you saw him? A Well, I arrived there about 10:30, and after going through what is known as a Russian bath.

Q You undressed yourself? A Yes, sir, undressed myself, and clothed myself with a sheet and went to the warm room or hot room, and from there to the steam room and out, and was rubbed by a rubber.

Q In the scrubbing room? A In the scrubbing room, yes, and then went to the cooling rooms to cool down. I was sitting in the parlor in the southwesterly corner of the parlor.

Q I show you People's Exhibit A and I ask you to look at it, and after looking at it tell me if you can recognize what that is? A Yes, sir, that is a fair simile of the bath.

Q Diagram? A Diagram.

Q Of what? A Of the Ariston baths.

Q Now, having recognized that as a diagram of the Ariston baths, just take that blue pencil and mark on it where you were at the time that you say you first saw this defendant?

A I was sitting in this corner, (indicating).

Q Make it an A for Abbott? A Make it an A for Abbott.

CASE # 350

Q How, if at all, was that parlor lighted, when you were seated in there? A It was lighted by a gas jet, if I remember right, in the middle of the entire parlor.

Q Was it very light or how? A Very light in the parlor, very light, very brilliant.

Q You were sitting on this sofa or settee in the parlor, when you first saw this defendant? A When I first noticed that defendant, yes.

Q After you had noticed the defendant-- just describe the appearance of the defendant and how if at all he was dressed when you first noticed him as you say? A He came forth from a cooling room, that is to the north of the parlor, the entrance leading into the parlor, and he was clothed in a sheet. The defendant walked toward a room in the southeasterly corner of the establishment, and when I saw him enter I arose and walked in, possibly some ten or fifteen feet in the rear of him, and he walked into this room and turned to the right which was in a southerly direction. I walked to the door and stepped in and saw the defendant standing in front of a man whom I have since learned by the name of Rogers.

Q Did you see the defendant's organ, genital organ?  
A I did, after I had entered the room.

Q How did it appear? A It was in a state of erection.

Q When you saw this defendant standing in front of Rogers, what did you see? A Then I saw the defendant step forward

CASE # 350



possibly eight or ten inches and Rogers took the defendant's penis in his mouth, and the defendant stayed in that position for a few moments; Rogers began the movements of ejaculation, he following in suit until such time as he ejaculated, when Rogers spit upon the floor. I backed out of the room to permit the defendant to leave the room, and got out in the parlor, and took a good look at him and immediately left the parlor and went into the hallway and looked at the clock. It was then about 12:50 A.M.

Q When the man Rogers spat, as you say, did you notice the organ, the genital organ of this defendant? A It apparently had left the state of erection. It was on the downward course.

Q Did you ever see this defendant before the 21st day of February, 1903? A I can't say that I ever did.

Q You never had any trouble with him? A Never saw the gentleman before that night that I ever remember, in my life.

Q At the time that you say you saw this act performed, by this defendant, who else, if anybody, that you knew, were in this room, at the extreme southeasterly side of the Russian bath? A Officer Hibbard, Officer McCutcheon and Officer-- I cannot just think of his name now. I will think of it in a minute.

Q Is he here? A Yes, sir, he was here. I was talking to

CASE # 350

him outside.

Q What sort of a looking man? A A young man, plain face, tall, thin, and thin face.

Q What color hair? A Hair about the color of mine--- Fitzsimmons, that is his name--- I was a little <sup>bit</sup> shy on thought, just for the minute.

Q Never mind that, you saw them in there at the same time you saw the act you have described committed? A Yes, sir.

Q Just look at the diagram there and show whereabouts you were standing? A I was standing about two feet to the north of the defendant, and about one foot parallel with the place in which Rogers sat, that is, parallel with the edge of the cot upon which Rogers sat.

Q Where were you with respect to Hibbard and Fitzsimmons? A I stood between Hibbard---

Q Just mark where you were on that diagram? A Fitzsimmons stood about here, Hibbard there, and I about here (indicating).

Q Then A marks the place you stood? A A marks the place or where that dot is, and little <sup>behind it</sup> ~~a~~ marks the place that I stood.

CROSS EXAMINATION BY MR. PENTECOST:

Q About what time was it when you were sitting in this parlor as you have described, indicated by the blue pencil

CASE # 350



mark, when you saw this defendant? A It was then about 12:45.

Q About 12:45? A Something along like that.

Q And he walked out of the parlor into this little corner room? A Yes, sir.

Q Then you followed him? A I followed him from the parlor into that room.

Q At the distance of ten or fifteen feet? A I was when I started, when I first permitted him-- that is when he was going in the room and when I first started, I was within about ten or fifteen feet behind him.

Q How far was the door of the southeast room from where you were sitting? A Possibly twenty feet.

Q He walked right in that door and turned to the right? A Yes, sir, he did, turned in a southerly direction.

Q The place where you say you saw this defendant Rogers perform this act was in the southwest corner of the room?

A Southwest corner of the southeasterly room, yes.

Q The door through which the light came was at the extreme other end of the room? A No, sir, not at the extreme other end.

Q Very near the end? A Yes, sir, very near the end.

Q There were portieres on that door, curtains? A There were, I think-- I am not positive, but if they were there they were well drawn back, because I had no--- there was noth-

CASE # 350

ing to eppose my getting in there.

Q The chandelier was about the middle of this parlor?

A About the middle of parlor, yes.

Q So that the light that went into that room, went in through that doorway, that was the only light there was in the southeast room, wasn't it? A Well, there was a window in that southeasterly room through which light came from the street.

Q A ground glass window? A It was ground glass window, yes, but a certain amount of light came through it. There was a gas lamp right outside.

Q How many other persons were there in that room? A Well, I couldn't tell you the exact number. I think there were some-- outside of the police officers I think there were some six or seven other persons. I didn't count them. I merely looked at those that were committing the crime.

Q How long were you in the room altogether at this time?

A At what time?

Q At the time you have described, at the time when this alleged act was committed between this defendant and Rogers?

A I followed the defendant in---

Q One moment, how long were you in the room? A Oh, possibly five minutes.

Q You preceded the defendant out of the room? A Yes, sir, I had to.

CASE # 350



Q You went out of the room before he did? A I had to.

Q You did? A I had to, yes, in order to let him out.

Q I don't care whether you had to or not; I asked you if you did? A I did, yes.

Q After you got out in the parlor you saw a man come out and you took a good look at him? A Yes, sir.

Q And this was the man? A That is the man, yes.

Q How long after that was it that you saw him again, or saw him the next time? A About an hour.

Q He was then under arrest? A Yes, sir, we then placed him under arrest.

Q Did you place him under arrest? A Yes, sir, I said this is the man we want.

Q You were the officer who identified him at the time he was arrested? A No, all four were standing in a line, all four officers were standing in a line and we drew forth from the number of people that were there-- each individual man coming up in turn--those who were charged with the crime of sodomy and disorderly conduct.

Q You say each individual man coming up in turn, where were they coming up from? A From the parlor; we stood in what might be called the cafe, the place where they had served drinks &c., and each individual man that went to the bath on that night was put into the parlor.

CASE # 350

Q That is 75 or 80 men? A Yes, sir; and then they came forth one at a time, and if we charged them, or if we saw him do anything during the night, we said "This is the man we want", and we placed him in another room. After they had been all dealt with in like manner, those who were not charged by police officers with-- or those who they did not want to put under arrest, were permitted to leave, and the balance were placed under arrest and took to the 22nd precinct.

Q Was Hibbard present at the time this man was picked out? A Yes, sir.

Q And Fitzsimmons? A Yes, sir.

Q And McCutcheon? A Yes, sir.

Q You officers, the four of you, stood in a line? A Yes, sir.

Q Were there any other officers in there that night making this inspection or observation? A Yes, sir.

Q They had nothing to do with the identification of this defendant? A Not with this defendant that I know of.

CASE # 350



NORMAN J. FITZSIMMONS, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. REY:

Q What is your business? A Police officer attached to the Central Office and assigned to duty in the Fourth Inspection District.

Q You were such on the 21st and 22nd days of February, 1903? A I was.

Q And you were a police officer connected with the Municipal Police Force of the City of New York? A I am.

Q You were there, and you are now? A Yes, sir, I am.

Q And attached, as you stated a moment ago, to the Fourth Inspection District, is that right? A Yes, sir.

Q Now, on the night of the 21st of February, 1903 where, if anywhere, did you go? A Went to the Turkish Baths known as the Ariston Bath at 1730 Broadway. I entered there about --

Q That is in the City and County of New York?  
A Yes, sir.

Q What time did you go there? A About 9 o'clock.

Q What did you do when you got there? A Well, I was assigned to a room, disrobed and went through the regular course of a Turkish bath.

Q You undressed yourself? A Yes, sir, undressed myself

CASE # 350

in the room I was assigned to.

Q What did you get, if anything, after you undressed?

A A sheet.

Q Then you proceeded to take your bath? A Yes, sir,  
in the regular way.

Q After that what did you do? A Scrubbed off.

Q Then what did you do? A Then I went around through  
the premises.

Q How were you attired after you had been scrubbed off  
and were going around through the premises? A The regulation  
bath sheet, turkish bath sheet.

Q Did you see the defendant? A Yes, sir.

Q There on that night? A Yes sir.

Q About what hour did you see him? A I seen him about  
the hour of 12:50 A. M. on the morning of the 22nd.

Q The morning of the 22nd of February, 1903?

A Yes, sir.

Q Where did you see him? A On these premises that I  
stated.

Q Whereabouts? A The southeasterly room of these premis-  
es.

Q What is that southeasterly room? A It is a cooling  
room.

Q I show you People's Exhibit A, and ask you to look at

CASE # 350



it and tell me, if you recognize what that purports to be?

A That is a diagram of the premises.

Q Whereabouts is the room there that you state you saw the defendant in? A There (indicating).

Q And where were you when you first saw the defendant?

A I was in that room when he first came in there.

Q You were in the room when the defendant came in?

A Yes, sir.

Q What did you see when the defendant came in? A I seen the defendant, when he came in; he passed by me. I was standing with my back against the westerly wall of the room, and this defendant passed me and stopped and leaned back against the wall immediately next to me, and remained there about 45 seconds to a minute or so, and, on a cot immediately in front of him was a man whom I have since found out to be John Rogers, and this John Rogers sat up, he was lying down at the time, he sat up and seated himself at the end of the cot immediately in front of the defendant; the defendant took one step forward from the wall and threw open the sheet and the defendant took the penis of the -- at least, John Rogers took the penis of the defendant in his mouth and made indecent motions.

Q At the time, as you say that this man Rogers took the genital organ of the defendant in his mouth, did you notice

CASE # 350

that genital organ, his penis? A Yes, sir.

Q In what state was it? A In a state of erection.

Q After the person that you describe as John Rogers had taken the organ which you have designated in his mouth, describe what happened? A It remained in his mouth for a period of from two to five minutes, and after these indecent motions had been gone through, such as backward and forward motion, Rogers sat back on the bed and leaned over and spit out, and the defendant left the room.

Q After the man Rogers had spat out, as you say, did you notice the organ of the defendant here? A Yes, sir.

Q What condition was the organ of the defendant at that time? A It was not in a state of erection at that time.

Q Then what happened? A He left the room.

Q Who left the room? A The defendant.

Q What, if anything, did you do? A Followed him out to the adjoining room which was brilliantly lighted, for the purpose of better identification.

Q You looked at him? A Yes, sir.

Q From the time you saw this act performed until the time that you saw him, the defendant, in this brilliantly lighted room, did you lose sight of this defendant? A Not at any time.

Q What time was it that you saw this defendant in the parlor, in this brilliantly lighted room? A About 12:55.

CASE # 350



Q And how brilliantly lighted was this room? A I should judge twelve gas lights.

Q What room was it that you followed this defendant to and identified him? A This room here, called the parlor.

Q What is it marked? A Designated as A.

Q Never mind the designation, the parlor? A The parlor, yes.

Q Did you see any other officers in the southeasterly room? A Yes, sir.

Q Where this act that you have described occurred?

A Yes, sir.

Q At the time the act was committed? A Yes, sir.

Q Who? A Officer Hibbard stood immediately to my left; Officer McCutcheon was in front of Hibbard; and Officer Abbott in front of him.

Q Taking the diagram again, looking at the room where you say this act occurred, designate there where they were?

A There is the defendant, there is Rogers; I stood there; Officer Hibbard stood there; there is Officer Abbott, and there is Officer McCutcheon sitting on the end of the third couch.

Q Who was sitting on the end? A Officer McCutcheon.

CROSS EXAMINATION BY MR. PRATERCOST:

Q The position you have just indicated there on the dia-

CASE # 350

gram, was that the position the officers were in when this defendant came in? A Well, I do not believe Officer Abbott was in the room at all when the defendant came into the room.

Q Officer Abbott came in you say afterward? A Immediately after the defendant.

Q Sure about that? A Positive.

Q You were standing there, were you not, with your back against the wall? A Yes, sir.

MR. KELY: I object to the question--what wall?

MR. PENTECOST: The west wall?

MR. KELY: That is all right.

BY MR. PENTECOST:

Q The defendant passed between you and the cot immediately in front of you? A Passed immediately in front of me, yes.

Q And took his position on your right against the same wall? A That is right.

Q Then at the time of the commission of the act which you describe, he stepped forward about a foot? A About that much.

Q And opened the sheet he had around him? A Yes, sir.

Q At the time you saw the defendant in the parlor, when he left the southeast room, how many people were in that parlor? A I should judge 20.

Q He walked right out of the room ahead of you and

CASE # 350



mingled with the 20? A No, sir, I stood alongside of him by the time he got to the entrance.

Q What is that? A I stood alongside of him when he got to the entrance to the parlor.

Q You preceded him? A No, sir, I followed him.

Q And stood alongside of him in the doorway of this southeast room? A Not exactly in the doorway, about a foot from the doorway.

Q At that time you were both in the southeast room, were you not? A No, sir.

Q Outside, in the parlor? A In the parlor, yes.

Q Where did you go after that, right back in the room, in this southeast room, after you looked at the defendant; did you go right back in the southeast room? A Not immediately—probably four or five minutes afterwards.

Q Where did the defendant go? A That I do not know. He may have sat down in the parlor, and may have gone to another room.

Q You don't know? A No.

Q At that time there were 75 or 80 people moving around in the bath, were there not? A Throughout the premises.

RE-DIRECT EXAMINATION BY MR. KELY:

Q Did you ever see this defendant before the 21st of

CASE # 350

February, 1903? A No, sir.

Q Never had any trouble with him then, did you, at all?

A No, sir.

HARRY McCUTCHENON, called as a witness in behalf of the People, being duly sworn and examined testified as follows:

DIRECT EXAMINATION BY MR. KELY:

Q What is your business? A Police officer.

Q Connected with the municipal police force of the City of New York? A I am.

Q Were you so connected on the 21st and 22nd day of February, 1903? A I was.

Q Attached to what precinct? A The 22nd precinct.

Q How are you attached now? A To the First Inspection District, under Inspector Schmittberger.

Q On the 21st day of February, 1903, in the evening, where did you go, if anywhere? A I went to 1730 Broadway.

Q What is that? A That is known as the Ariston Bath.

Q And 1730 Broadway is in the City and County of New York?

A Yes, sir.

Q Where the Ariston Baths are situated? A Yes, sir.

Q What time did you go there in the evening? A I went there about half past ten.

Q Did you see the defendant there on that night? A I did.

CASE # 350



Q What did you do when you got to the Ariston Baths?

A Well, I went in and paid one dollar and had my valuables checked, put in a box, and I undressed and took a bath and looked around for evidence.

Q After you took a bath, was it before or after you took the bath that you saw this defendant? A After.

Q Where were you when you saw this defendant? A I first saw him in the cooling room.

Q I show you People's Exhibit A, and I ask you to look at that and see if you recognize what that purports to be?

A That is a diagram of the place.

Q The Ariston Baths? A The Ariston Baths.

Q Now, whereabouts is the cooling room to which you have referred as having been the one in which you saw this defendant?

A Well, the cooling room is right in the centre; it is off the parlor.

Q Is that it (indicating)? A No, sir, that is one of them -- that is the easterly room -- this is one of the cooling rooms-- that is where I saw the defendant.

Q The first? A The first time.

Q You saw the defendant in the centre cooling room first?

A Yes, sir.

Q I will mark that X in red pencil -- where next, if at all, did you see this defendant? A Well, I saw him in the

CASE # 350

parlor and then in the easterly room, cooling room.

Q The easterly cooling room? A Yes, sir.

Q What, if anything, did you see the defendant do when he was in the room marked X? A Well, he was walking around in the room marked X, with a sheet loosely thrown over his shoulders.

Q Talk loud, so the jury can hear you; he was walking around in the room X, with the sheet loosely thrown over his shoulders? A Yes, sir.

Q What, if anything, did you see him do in the easterly cooling room? A Well, I saw him when he walked in and he stood with his back towards the westerly wall and there was a man lying on the first cot, lying down; he sat up on the end of the cot and this defendant took a step forward and the man that was sitting on the cot placed his mouth over the penis of this defendant.

Q Did you notice the genital organ or penis of this defendant at the time this man who had theretofore been lying down and then sat up and took the organ in his mouth?

A Yes, sir.

Q How was it? A It was in a state of erection.

Q Then what happened? A He went through --

Q Who? A The defendant went through indecent motions, and the penis was withdrawn from the mouth of this man that

CASE # 350



sat on the cot, and when it was withdrawn, it was no longer in a state of erection.

Q Go on, what happened? A Well, this man walked out of the room and the other man spit something on the floor and lay back on the cot.

Q Did you see anybody in the room whom you were acquainted with? A I did.

Q Who did you see in this room, I talk of this room where this act you have just described occurred, at that time? A I understand, yes.

Q Who did you see? A I saw Officer Abbott, Officer Hibbard and Fitzsimmons.

Q Where were you when the defendant entered that room? A I was laying on the third cot.

Q Look at that diagram and see whether you can point out where you were? A There is where I was (indicating).

Q There is an N on here? A Yes, sir.

Q And you refer to the cot here, to the first cot? A That is where the man sat.

Q Where the act occurred? A And this defendant right opposite.

Q Now, McCutcheon, from the time that the act was performed, as you state, until you identified this defendant, did you lose him out of your sight? A He was out of my sight, yes.

CASE # 350

Q What did you do as the defendant left the cooling room? A Well, I watched him until he went through the parlor into the other cooling room.

Q You watched him, what do you mean; did you remain there on the sofa or cot? A I stood over in the doorway leading in to the easterly room and kept my eye upon him.

Q That is, to the parlor? A Yes, sir.

Q Leading from the easterly room into the parlor?  
A In to the parlor.

Q How did the defendant pass relatively to you? A He passed right close to me.

Q How far off did he pass, when he passed out?

A Probably about two feet.

Q Did you recognize the person so passing as this man here? A I did.

Q From the time the act was committed until he passed by you, as you say, had you lost sight of the defendant for a moment? A Not for a moment.

CROSS EXAMINATION BY MR. PENTECOST:

Q Was it sufficiently light in that corner of the room where Rogers and this defendant were, as you say, for you to recognize his features? A It was.

Q It was quite light there? A Yes, sir, it was light

CASE # 350



enough to see plainly, or to distinguish any one's features.

Q And light enough for you to see the condition of this man's genital organ as you have described it? A Yes, sir.

Q Clearly and perfectly? A Yes, sir.

Q Did you go out into the light from that room for the purpose of identifying the man? A I went out to the light, yes, where the electric light shone on me, where the light from the parlor shone into the other room through the door.

Q Did you do that for the purpose of getting a good look at the man's face? A Yes, sir.

Q What did you do that for if you could get a good look at his face when you were in the little room? A I wanted to make perfectly sure, and to see any marks on his face, if he had any, so there would be no mistake in his identity.

Q This sheet that he had on, was it an ordinary sheet that a person uses in a turkish bath? A Just the ordinary sheet.

Q Large sheet, sufficiently large to cover the whole body? A Well, yes, sufficiently large enough.

Q When he came in the room he had it wrapped around him?

A He had it thrown over his shoulders loosely.

Q Was his person exposed, his whole body exposed, as he walked in the room? A His whole body was not exposed.

CASE # 350

Q Was the front of his body exposed? A The front of his body was exposed, so you could see his privates.

Q You could see his private parts? A Yes, sir.

Q Did he walk right into that room with his private parts in a state of erection? A When he came in you could see his privates plainly.

Q In a state of erection? A Yes, sir.

Q So he walked clear through that room in that condition? A Well, not very strong erection, I should judge, but apparently in a good state of erection.

Q When he took this step up before Rogers, what did he do with the sheet, if anything? A He threw the sheet back and stepped forward.

Q What do you mean by throwing the sheet back? A He just simply pushed it back a little bit from his side.

Q What? A He pushed the sheet back from where it was hanging on his sides, down his legs, and stepped forward.

Q Didn't he walk right up before Rogers and open the sheet like that (indicating) exposing his person and his private organs to Rogers? A The sheet was open before he stepped forward, and when he stepped up, he threw it right back.

Q Was it open wide enough so there was no necessity for his throwing it back, to facilitate Rogers purposes?

CASE # 350



Objected to.

THE COURT: If the witness may answer, he may do so.

THE WITNESS: I hardly understand that question.

Q (Question repeated) A By throwing it back, I suppose it was more convenient for him.

Q What kind of a floor was it in that room, marble, wood, carpet or what? A I hardly know what kind of a floor it is. I don't remember whether there was carpet on the floor in that room or not.

Q How long were you in there at this time? A Oh, I was in there on and off four or five times, at that time.

Q You were in and out of that room four or five times that night? A Yes, sir.

Q How much time did you spend in there altogether, do you suppose? A I can hardly recall that.

Q You saw many acts of sodomy committed that night in that room? A I seen several.

Q At different times? A Yes, sir.

Q But you have no recollection what kind of floor it was, whether it was carpeted or wooden or marble?

A To the best of my knowledge and belief, I think it was carpeted.

CASE # 350

Q Carpeted? A I think there was a carpet or rug on the floor.

Q I understand you to say that when the defendant came in that room, with his body exposed as you say, and walked down through the whole length of the room in that condition, that there were present Officers Hibbard, Fitzsimmons, Abbott and yourself, is that right? A When he walked in there?

Q Yes. A No, sir.

Q Where am I wrong? A I testified they were in there while this act was being committed.

Q While the act was being committed? A Yes, sir.

Q How long was the defendant in there? A Oh, I suppose three or four minutes.

Q Three or four minutes? A Probably.

Q What did you all do, go in after the defendant did?

A I was in there when the defendant came in,

Q Who else was in there when he came in? A Why, I hardly remember now just who was in there when he came in.

Q You don't know which one of your brother officers was there when he came in? A Because my attention was attracted to him more than it was to other people, until the act was started.

Q When he went to where Rogers was lying on the cot, was there any person near him? A Why, the officers were standing

CASE # 350



near him, at that time.

Q What officers? A Fitzsimmons, Hibbard, and Officer Abbott.

Q All standing right near? A Well, they were standing right near.

Q Then he must have passed in front of Abbott and Hibbard and Fitzsimmons to get to Rogers, must he not?

MR. KELY: I object. He stated he couldn't tell who the officers were.

Objection sustained.

BY MR. PENTECOST:

Q Did the defendant want pass in front of Officers Abbott, Hibbard, and Fitzsimmons, when he went to Rogers?

Objected to upon the same grounds.

THE COURT: If he knows he may answer.

THE WITNESS: He was followed in by one or two of the men; I can't just recall now which one followed him in there.

Q Then when he went out, how many of you followed him out? A I think there was two followed him out.

Q Who were they? A Fitzsimmons, I ain't so positive, but to the best of my recollection, followed him out, and Hibbard started to go out.

Q Hibbard started to follow him out? A Yes, sir.

CASE # 350

Q Cannot you talk up so we can hear you? A All right.

Q Did you follow him out? A I did not.

The Court admonishes the jury in accordance with  
Section 415 of the Code of Criminal Procedure and  
takes a recess until to-morrow morning, Tuesday,  
April 7th, 1903, at 10:30 A. M.

CASE # 350



April 7, 1903.

TRIAL RESUMED.

THEODORE CASSON, called as a witness in his own behalf, being duly sworn and examined, testified through the Official Interpreter Dellin, as follows:

DIRECT EXAMINATION BY MR. PENTECOST:

Q Where do you live? A 124 Washington Place, City and County of New York.

Q What is your business? A I am a confectioner, candy maker.

Q For whom do you work? A Helmseder, Broome Street.

Q Is that the gentleman for whom you work (indicating)?  
A Yes, sir.

Q How long have you worked there? A A year and a half I work there.

Q Were you at the Turkish Bath place at 55th street and Broadway on the night of the 21st of February last? A Yes, sir, I was there.

Q Did you hear what the witnesses testified to yesterday?  
A I do not understand English.

Q What time did you get to the Turkish bath that night?  
A About half past ten o'clock in the evening.

Q After you went to the bath at half past ten, what did

CASE # 350

you do while you were in the bath place? A I took my bath-- I simply took my bath.

Q Tell everything that you did; what did you do after you took your bath? A I was about-- I just commenced to take my bath and had my sheet over me. I took my bath and then I was on the bed opposite the closet, my dressing closet. I was taking a rest and I was about to dress myself. That is all; that is simply how it was.

Q What happened when you were about to dress yourself? A I was about dressing myself. I was arrested. I couldn't speak English. I didn't know what it was.

Q Did you go into a room, in the southeast corner of the bath? A There is a kind of a parlor there and there are cabins there.

Q Did you go into a room and allow a man to take your penis in his mouth? A No-- none of this.

Q Not at any time during the evening? A No, sir, I only was there to take a bath, nothing else.

CROSS EXAMINATION BY MR. ELY:

Q You went to this Turkish bath about half past ten on the night of the 21st of February last; is that right?

A Yes, sir.

Q Why did you say *Wie Monsieur* when I asked you that question -- don't you understand me? A I don't understand you.

CASE # 350



Q Is that the first time you ever went there? A The first time.

Q What did you do when you got there? A I was about to take my bath. I didn't do anything.

Q What do you mean by you were about to take your bath, when what happened? A I was dressing myself to take my bath.

Q Undressing yourself-- just describe to me what you did when you first went into this Russian bath place? A When I came in I gave a dollar and I got the key to my cabin.

Q To your dressing room? A Yes, sir.

Q Look at this paper ~~and see if you understand that?~~ A I don't understand it.

Q Now, whereabouts did you go after you had entered the Russian bath place on the evening in question; where did you go first? A I paid a dollar and I was at the counter and he gave me the key to take my bath.

Q Then what did you do? A I was in the bath and took my bath.

Q Whereabouts was your dressing room? A Entering the bath room to the left.

Q On entering the building, it is to the left? A To the left a small salon, small parlor.

Q Did you have to pass through a large parlor in order to get to this dressing room? A No, sir.

CASE # 350

Q Just describe more particularly where this dressing room was that you said you went to, after you had got your keys? A Entering the small parlor, it was to the left.

Q What do you mean by the small parlor; do you mean the office where you paid your dollar for your bath and got your key? A No, sir.

Q Where is this little parlor that you refer to with respect to the office? A Well, had to pass-- not far away-- had to pass another door.

Q You came right into the entrance on 55th street and gave your dollar and got your key, went down in a little room behind the office and then turned to the left; is that right-- and went to your dressing room? A Yes, sir--

Q I said then you went into the little room, behind the office and turned to the left and went to your dressing room? A Yes, sir.

Q Look at this diagram, here is 55th street, here is the entrance to the Turkish bath at 55th street? A Yes, sir.

Q And there is the desk at which you paid your dollar? A Yes, sir, it is to the left.

Q And right back of this room where the desk is a little room with an ice chest and sideboard in it? A The bouffe is near the door.

Q But you went through this room where the bouffe and

CASE # 350



ice chest was in order to turn to the left and go to your dressing room, did you not? A Yes, sir.

Q And then you went to the left here? A Yes, sir.

Q After you got to your dressing room on the Westerly side of the office, what did you do-- you undressed there?

A Yes, sir, I undressed myself and took my sheet.

Q After that, what did you do? A I took my bath.

Q No, after that, did you go directly from your dressing room into the bath room? A Yes, sir, where the steam is.

Q And how long were you in the steam room? A About six or seven minutes.

Q Six or seven minutes in the steam room, is that all?

A I couldn't tell you-- maybe a quarter of an hour. I can't tell exactly.

Q And where did you go after you left the steam room?

A I went out and then I laid down on the bed to take a rest.

Q What bed did you lie down on; where was the bed you lay down on? A Opposite my cabin.

Q Let us look at Exhibit A again-- here is your dressing room over here (indicating)? A Yes, sir.

Q Here is the steam room (indicating)? A Yes, sir.

Q Now, after being in this steam room, where did you go? A Only to my room and to my bed.

Q Your bed was here (indicating)? A Yes, sir.

CASE # 350

Q There were beds between these dressing rooms? A Yes, sir.

Q You laid down there on this bed in front of your dressing room, is that right? A Yes, sir.

Q You remained all the time, did you, until you were arrested? A I was covered, yes.

Q You were covered there? A Yes, sir.

Q Did you see that man there on that night (Hibbard)?  
A I don't recollect.

Q Did you see that officer there that night (Abbott)?  
A I don't know anybody.

Q How much money do you earn a week? A \$15.

Q How many times have you ever taken a Turkish bath before? A This is the first time.

Q Was this the first time you had ever taken a Turkish bath in your life? A Yes, sir, the first time.

Q How did you happen to go there?

BY THE COURT:

Q How did you happen to go to this particular place?

A It was Saturday evening and I was somewhat sick and I passed there. I passed that street and I saw there a Turkish bath there and I entered.

BY MR. ELY:

Q You just went in there; is that right?

CASE # 350



BY THE COURT:

Q If you did not understand English how did you recognize that they were Turkish baths? A The letters are just like it in French, and I understand it the letters.

Q Is the word bath in English expressed the same way in French? A The French is "bain".

Q How did you know baths were bain, if you didn't understand English? A It is written in English Also bath.

BY MR. ELY:

Q You live at 124 Washington Place? A Yes, sir.

Q What were you doing up here at 55th street; how did you happen to be at 55th street at half past ten at night? A In the house where I work the foreman was sick. I passed, because he was lived in 49th street, and I thought that his wife will give me any information about him.

Q That is the only reason that you can give for being up at 55th street at half past ten? A Yes, sir.

Q What number on 49th street did you go to? A I don't recollect the number.

Q How many times had you ever been to this place on 49th street of which you do not recollect the number, before? A I was three or four times in that house, when he lived there.

Q How did you go-- did you go from your own house or from Broome street to this place in 49th street that you

CASE # 350

don't remember the number of? A Yes, sir.

Q How did you go? A I took the cars.

Q What car? A I was first in my house.

Q Your house is 124 Washington street? A Yes, sir---  
Washington Place.

Q What car did you take? A I don't know exactly what  
car, but I took the Broadway car.

Q Where did you get off? A At 40th street.

Q Why did you get off at 40th street? A In order to  
go to that house where my foreman lived.

Q Where did you say you--- on what street did you say  
your foreman lived? A 49th street.

Q Why did you get off at 40th street to go to see your  
foreman residing at 49th street? A It was in order to walk  
because I don't know the car, and I didn't know what car to  
take.

Q But you were on the car already when you left it at  
40th street? A Then I walked to go to his place.

Q Why did you get off at 40th street if you wanted to  
go to 49th street, that is what I am asking you? A I don't  
know exactly the street, and that is the reason I left the  
car.

Q That is the best explanation you can give of it, for  
quitting the car at 40th street? A Yes, sir.

CASE # 350



Q You quitted the car at 40th street and Broadway?

A Yes, sir.

Q And then how did you go? A I went to the left to go to his place.

Q Then you walked through 40th street, did you, to the west? A Yes, sir -- I didn't know -- I walked there because I didn't exactly know the place.

Q How far did you walk on 40th street going west?

A I walked a quarter of an hour or so.

Q How far did you get in that quarter of an hour?

A I went through 40th street -- I don't recollect -- I don't know the street and I don't recollect.

Q After you walked a quarter of an hour through 40th street going west, how did you get up to 49th street-- did you take another car? A I left the house to take a car.

Q I will ask you one more question, why after leaving this house that you say you went to on 49th street, the number of which you don't tell us, why did you go to 55th street, instead of going home, how did you happen to be in 55th street?

A I made a mistake and I passed-- I don't know the streets.

RE-DIRECT EXAMINATION BY MR. PENTECOST:

Q Do you talk English at all?

Objected to. Objection overruled.

A No, sir, I dont talk.

CASE # 350

Q Can you understand any English when it is spoken to you? A No..

Q Can you read English? A The letters, the English letters, and the French are the same and so I know how to read them.

BY THE THIRD JUROR:

Q How long have you been in this country? A A year and a half, about.

BY MR. PENTECOST:

Q Have you worked in any place except this one place?

Objected to as immaterial. Overruled.

A No, sir.

GUSTAVE HELMSTEDTER, called as a witness  
in behalf of the defendant, being duly sworn and examined,  
testified as follows:

DIRECT EXAMINATION BY MR. PENTECOST:

Q Where do you live? A 171 West 85.

Q What is your business? A Chocolate manufacturer  
and confectioner.

Q Place of business? A 554 Broome street.

Q Do you know the defendant? A I do.

Q Is he employed by you? A Yes, sir, since November,  
1901, sometime in November. I can't recollect exactly.

Q Have you ever had any conversation with him?

CASE # 350



A sometimes, about work.

Q what language do you speak to him? A Always French.

Q Where did your foreman live in February last?

A My foreman lives now in Unionport, but he lived in 49th street in a house that belongs to him. He moved last summer.

BY MR. ELY:

Q Last summer? A Or this summer, I don't know-- I can't remember.

BY MR. PENTECOST:

Q Do you know the defendant outside of your business?

A No, sir, as a rule I don't keep any social intercourse--

CASE # 350

## THE RECORDER'S CHARGE.

Gentlemen of the Jury: This being the first case upon which you have been called to serve as jurors at this term of court, I deem it proper to call your particular attention to the duties devolving upon you, that you may recognize the obligations which rest upon you.

There are two great divisions of action in a court of criminal law and those two consist in the action of the Judge and the action of the jury. The Judge is confined to one domain of action, the jury is confined to an other domain of action.

The distinctive obligations resting upon both Judge and jury, are, first: The Judge is the exclusive judge of the law of the law. His instructions to the jury upon the law of the case must not be questioned. They must be accepted in good faith and obeyed.

The law of the case is fixed by the Legislature of the State, the law making power of the People, of which you form a part, and when the law making power of the People declare a certain rule of action, or prohibit a certain thing to be done, that is the will of the sovereign power of the State and that will so declared in the form of law must not be questioned nor can it be disputed or dissented from in any way by a jury, much less by any

CASE # 350



citizen. The law conferring such power upon the Judge confers upon the jury a power exclusive in its character, and that is, the power to pass upon the facts in the case, to declare upon the evidence in the case what their conviction is. With that power to pass upon the facts, the Judge on the bench cannot interfere, even if he were so disposed, because the power to pass upon the facts exclusively rests with the jury.

You will understand, therefore, and, I think it will simplify matters for you, not only in this case, but in other cases that you may be called upon to serve as jurors, that you are the exclusive judges of the facts in the case, and the Court is the exclusive judge of the law. I will illustrate. Take this case as an illustration. The disputed fact here is that the defendant did not do the act that the witnesses for the prosecution claim that he did, the act that the law calls sodomy. That is a question of fact, whether he did the act or not, and you are the exclusive judges of that question of fact.

Now, as to the law of the case, I will instruct you as to the law applicable to such act when committed, so that when you understand the law of the case, and recognizing your obligation under that law, you will then address yourselves to a consideration of the facts in the case, whether, upon this evidence, the defendant

✓

CASE # 350

committed the act charged against him. If, after a consideration of the evidence, you should come to the conclusion beyond a reasonable doubt, that he did the act charged against him, that ends your function. You have nothing further to do with the case. It is not within your province to consider the question of punishment -- the length of imprisonment that might follow a conviction. It is not within your province to be swayed by a question of sympathy for the defendant or a prejudice against it. It is not within your province to be swayed in your findings upon the facts, because you may have thoughts or ideas that run counter to the law of the case. Your function is a very simple one. It is more than a function, it is a solemn obligation resting upon you. When you are sworn as jurors in a case you swear to fairly and impartially pass upon the facts of that case, and make a true deliverance by your verdict between the people of the State and the defendant. So, you will bear that in mind. When a jury goes beyond its province and declares a verdict for any other purpose or upon any other grounds than those that rest upon an honest conviction produced by the evidence in the case, that jury forgets its oath, each juror forswears himself. Even jurors may sometimes be swayed in their findings because

CASE # 350



of some personal experiences of their own of personal knowledge regarding other transactions than the one on trial. Of course, a verdict arrived by such means is not a verdict arrived at upon the evidence, because a juror in the court room who discloses his own opinion outside of the evidence, or attempts to sway his fellow jurors, is simply giving his impression, and if the jurors be swayed by his urging, they are simply swayed to find a verdict not upon a man's sworn testimony, not upon the sworn evidence in the case, but upon one man's unsworn statement that may be the result of lack of knowledge or of impression or of prejudice or false rumors.

So, you will observe how necessary it is for jurors to strictly pursue the line of duty marked out for them by the law. That is the only safe line to pursue and whatever the result of a jury's deliberation may be, if it be kept in mind that they are to consult their individual consciences and deliver in open court the result of their conviction, then, that is the nearest approach to absolute justice that any human tribunal can reach upon earth. When twelve minds agree as a result of honest conscientious conviction after listening to the sworn testimony in the case, that is about as near an approach to true justice that we can conceive of.

It is proper also that I should impress upon

CASE # 350

your minds that in a criminal court the action tried is not a litigation between individuals. It differs from a civil case. I speak of this particularly because, if I remember right, in your examination as to your fitness to serve as jurors, at least a large majority of you answered that you had never served upon a criminal case before, and that some of you have served upon a civil case. Because of that I point out to you the distinction that exists between a case tried in a civil court and a case tried in a criminal court. In a civil court the dispute is between private citizens and the subject of dispute is ~~property~~, ~~whether~~ ~~personal~~. Money lies at the base of all disputes in civil courts, and the result of verdicts in civil courts, in the main, are to adjudge that one man is indebted to another in a certain sum of money or that he will have to do something with regard to his property to satisfy the demand or claims of another.

In a criminal court the issue rests between the People of the State, the whole People in their sovereign capacity, and the person accused of crime. There is no room in a criminal court for a prosecution at the instance of a private individual. That cannot be. The People prosecute cases in a criminal court not by private counsel

CASE # 350



but by their representative elected by the People, the District Attorney, and, they prosecute an accused person not for the purpose of recovering a penalty of money or adjudging him indebted to any person in a sum of money, but to ascertain and determine whether or not the law of the State has been violated. That is the sole issue in a criminal case, whether the law has been violated, whether a crime has been committed, and if the law has been violated and a crime committed, then the People of the State demand that certain punishment, which they prescribe for violations of their law, be imposed upon the person who violated their law. The law of the State is designed for the protection of society, for the protection of the person and the property of mankind, for the maintenance of law, order and decency. When those laws are violated and evidence is given to a jury that satisfactorily proves to them that they have been violated, the only question left for them to answer is whether the defendant is guilty or not guilty. I apprehend, gentlemen, that you will understand the nature of a criminal prosecution.

Out of tender regard for the rights of the individual, the law ordains that certain rules shall be observed regarding an accused being brought to trial on a criminal accusation. First he must be indicted

CASE # 350

by the Grand Jury of the County. That indictment must not create a prejudice against the defendant. It is simply a formal accusation. But, no man can be put upon trial for a felony in this State unless he be first indicted by the Grand Jury of the County. The law ordains that every person accused of crime must be presumed innocent until the contrary be proven, and that presumption rests with this defendant throughout the case and up to the very moment that you become satisfied upon the evidence that he is guilty, and, the moment you reach that conclusion in your mind, the presumption of innocence is overthrown.

It is further ordained that the District Attorney representing the people and prosecuting the crime must prove his case. He is called upon to sustain the indictment against the defendant by proof, and that is called the burden of proof, and, it rests upon the District Attorney to establish to the satisfaction of twelve jurors, beyond a reasonable doubt, that the defendant is guilty of the crime charged against him.

It is also provided by the law that the defendant is entitled to the benefit of a reasonable doubt. I will not attempt to define the term "reasonable doubt" to you beyond what the very use of the words themselves carry with them and imply -- that is, a reasonable doubt

CASE # 350



is a reasonable doubt entertained by twelve fair and impartial minds after weighing the testimony in the case. If such a doubt exists it must be given to the defendant and he must be acquitted upon that doubt. Byt, it must be a reasonable doubt founded upon the evidence in the case, or lack of evidence in the casse, and, you must be careful to draw a distinction between what is a reasonable doubt founded upon the evidence in the case and a mere guess or conjecture or whim or an excuse on the part of a juror to avoid bringing in a verdict of guilty because it would be unpleasant for him to do so. Very many duties imposed upon men are unpleasant in their performance, that is men would rather do the thing that appeals to sympathy and to the softer part of humanity than to do that that is sewere and rigid though just, but the law cannot be administered in that way. There are well defined rules and they must be observed in a court of law. A jury hasnothing to do whatever with sympathy. If there be reason for the extension of mercy, the discretion to do that is vested in the Judge and not in the jury.

These are general rules that apply to all criminal causes, and, of course, they apply to the defendant on trial, and I will, without further comment, proceed to instruct you upon the law of the case.

CASE # 350

The indictment charges the defendant that on the 22nd day of February this year and in this county, he committed the crime of Sodomy. That crime is defined by the statute in the following language, and I invite your careful attention to it: "A person who carnally knows in any manner any animal or bird, or carnally knows any male or female person by the anus or with the mouth, or voluntarily submits to such carnal knowledge, is guilty of sodomy."

It is charged by the Prosecution that the defendant voluntarily submitted to the carnal knowledge of a person by means of the mouth.

Of course, we cannot disguise the fact that any reference to the testimony in the case must necessarily be very unpleasant and disagreeable. It affects the very self respect for ourselves and regard for humanity. It brings to the mind a species of horror to think that any person, any human being endowed with intelligence, with reason, would be guilty of such horrible practices, but the law finds it necessary to forbid such practices, and laws are always defined to attain a special and certain purpose, and they are enacted to meet certain contingencies. We find the law upon the statute book and we must obey it, and while I have said that the mere consideration of such things so revolting in their nature

CASE # 350



is calculated to possess us with a certain amount of horror and revulsion, I caution you that you must not let any revulsion in your mind against such horrible practices operate to the prejudice of the defendant upon the question of whether or not he did the act charged against him. The mere accusation of such an offense sometimes clouds the judgment and prevents a careful and fair examination into the truth or falsity of the charge. You must be careful in this case to dis sever from your minds any loathing or sense of loathing you might have for the act itself as described in the law, and the question of whether or not the defendant did the act.

I deem it unnecessary for me to say to you while something has been said about these practices having been known to the ancients in classic times, that they have been indulged in in modern times even by men of considerable literary repute and standing. That, of course has nothing whatever to do with the question. Our laws declare such practices criminal, and it does not require any words from me to justify the existence of that law. We are here to obey the law and you are here to declare upon this evidence whether or not the defendant did an act condemned by the law.

CASE # 350

The prosecution claims to have established by the testimony of four witnesses that on the night in question the defendant was seen by them to do the act charged against him; that he was in a Turkish bath naked with the exception of a sheet wrapped around his person, and that while in that condition he voluntarily submitted himself to the operation described by the witnesses.

The defendant denies the act. There is no question, as I apprehend the evidence, but that he was in the Turkish bath, and that he was arrested there. The defendant admits that he was in the Turkish bath.

The witnesses for the prosecution claim to have arrested the defendant almost immediately after the act--arrested him with many others and the defendant admits that he was there and was arrested, but denies that he did the act of Sodomy charged against him. That brings up a direct conflict of testimony. Who is telling the truth? That is your duty to ascertain and declare. In this conflict of testimony, in the face of this assertion on the one hand and denial on the other, wherein lies the truth?

In order that a jury may have all facilities for arriving at the truth, the law declares that the

CASE # 350



jurors are the judges of the credibility of every witness that goes upon the witness stand. That is, you gentlemen are to determine whether or not any witness told the truth or told what was false, and in passing upon the credibility of a witness, you have a right and it is your duty to take everything about that witness into consideration, his manner, his appearance, everything about his testimony that can convey to you, to your mind, the belief that he is telling the truth or not, and in passing upon the question of credibility you can ascertain or inquire at least, in your minds, whether or not the witness had a motive to testify that would cause him or induce him to swear to what is false. Motives may be hidden, generally they are, but, a jury can determine whether or not there is a motive from all the facts and surrounding circumstances of the case. If it should appear that a witness desired revenge against the accused, you would say, and justly say, that that witness has a motive, a motive for revenge. Or, if it should appear that a witness had a monetary interest in the result of the trial, you might say that witness is influenced by the hope of gain or of reward, or, if it should be disclosed that a witness was possessed of a very great degree of friendship for

CASE # 350

an accused, you might say that witness is influenced by his friendly feelings towards the accused and consequently it has affected his testimony, and so it is, if it should appear that a witness is possessed with a hatred against the defendant, you might say that witness so hates the defendant that he is inclined to exaggerate or intensify his testimony. In all questions of the credibility of a witness, you are to look into the surrounding facts and circumstances.

Is there anything in this case that warrants the belief or sustains the conclusion that the witness has a motive to testify untruly? Then again, you may, in a case where there is such a sharp conflict, as in this case, you may inquire into the reasonableness of the situation as described by a certain class of witnesses, whether it is improbable or probable -- whether, taking all the facts and circumstances into consideration, they bear out and sustain the oral statements of the witnesses.

The witnesses for the prosecution have, in substance, testified that they went to this Turkish bath establishment, and that they saw a number of men, and in answer to the question of the learned counsel for the defense, one or two of them, I think, stated that they saw several acts of sodomy committed there besides the one

CASE # 350



testified to as having been committed by the defendant. I wish to warn you that if you believe that there were a number of men engaged in sodomatic practices, that of itself would not be sufficient to warrant you in declaring the defendant guilty. You must be satisfied that he did the act. But, you are at liberty to take into consideration the testimony of all the surrounding circumstances, and of other matters occurring there, so that you may be able to judge as to the reasonableness, the probabilities, the truth or the falsity of the witnesses statements for the prosecution.

Where two men testify and one distinctly asserts that the other did a certain act, and the other as distinctly asserts that he did not do the act, and it presents a question to a jury not of a mistake of identity but of determining which of them has told the truth as to the fact in dispute it reasonably follows that the men who disagree so absolutely and so radically cannot be telling the truth, one or the other of them must lie. Who is telling the truth? Have the witnesses for the prosecution told the truth or told a falsehood? If they have told a falsehood, it would be a difficult thing to ignore the belief that they have deliberately sworn to that is false and thereby committed perjury. If the defendant's

CASE # 350

statement be true, the officers' statements must be false, and while you are not called upon to determine upon this evidence whether or not these four witnesses for the prosecution have deliberately and knowingly gone upon the witness stand and each one of them sworn to a perjury against this defendant, you cannot avoid passing upon the truth or the falsity of their sworn statements.

I deem it proper to remind you, because of certain strictures passed upon the police, that it is a very dangerous thing for a jury to indulge in generalization. It would be an exceedingly dangerous, as well as an unjust thing, for a jury to resolve upon a sweeping declaration that a whole body of men, without regard to individuals, are unworthy of belief and liable to commit perjury. That would not only be unjust but it would be illegal. The law does not so declare. While a jury's power to inquire into the credibility of a witness is unlimited, yet a jury's power is limited to pass upon the testimony of each witness that has been sworn before them, and it would be exceedingly unjust and beyond the power of a jury to simply condemn one or more men as perjurers because they belong to a class. The law does not do it. The law declares that every man shall be judged by his own actions, and in a court of law you will see at once how dangerous it would be to enter into a sweeping conclu-

CASE # 350



sion as to the falsity of a witness simply because he belonged to a certain class or occupation in life.

It may be true that the police force have been subjected to very serious public criticism, and it may be true that in many respects they have deserved that criticism, but that criticism has been mainly directed either against individuals or against the system in the police department, but it does not follow that 12 men, when they take an oath in a court of justice to declare their verdict upon the evidence in the case, that they shall be swayed or influenced by this public or general criticism of a class of public servants. You must determine this evidence upon its merits and upon no other ground. Is it the truth? You should ask in this case, is it the truth that these four witnesses, who appear to be sworn officers of the law, and who was in the performance of their duty, as they say, that they went into that Turkish bath establishment and that they picked the defendant out without any cause or justification, and manufactured this story that they have given on the witness stand against him? Does it appear that there was ever any connection or knowledge between this defendant and those four men? And so far as the evidence goes, does it disclose any motive that would prompt or influence these four officers, each of them, to deliber-

CASE # 350

ately forswear himself against this defendant? It rests with you to answer those questions.

It has been well said by the learned counsel for the defendant that in such a case it frequently happens that no other defense is possible but the defense of denial, and the defendant has put in that defense. The rule which I have given to you with regard to testing the credibility of the witnesses for the prosecution, must be applied to this defendant in the same way. He becomes a witness the same as any other witness that takes the witness stand, and it is for you to say if he is actuated by a motive that would influence him or induce him to swear to anything but the truth.

I have no expression to make regarding the evidence touching the facts in the case. I have before instructed you that that belongs to you. I have told you what the law is. Your duty is to declare whether or not the defendant committed the act of sodomy charged against him. If you are satisfied, on the evidence, that he did not, of course your duty is plain, to declare him acquit him, but, if you are satisfied upon the evidence and beyond a reasonable doubt, that he did that act of sodomy, then your duty is equally plain, to declare him guilty of the crime charged against him, and in reaching one or the other of these conclusions, you must not be influenced by any fear or apprehension of criticism upon

CASE # 350



your verdict, or of not pleasing this one or of displeasing the other. A jury can never consider anything but their verdict and the justice of it. When they declare their verdict from pure and conscientious motives, that disposes of all question. I submit the case to you.

MR. CAMPBELL: I ask your Honor to charge that the jurors have a right to and should use their general knowledge and experience in weighing and considering the truth or falsity of the statements made by the witnesses.

THE COURT: Yes, in connection with the testimony given in the case. I so charge.

MR. CAMPBELL: I except to that portion of your Honor's charge in which you say that if the defendant's statement be true, the officers statement must be false, and you are called upon to determine on this evidence whether or not these four witnesses for the prosecution have deliberately and knowingly, gone on the witness stand and each one of them sworn to a perjury against this man.

THE COURT: You omitted to state the preceding proposition I made to the jury, that that question was for them to determine, whether or not, on the conflict of evidence presented to them, one man committed perjury and the other man told the truth.

CASE # 350

73

MR. CAMPBELL: With all due respect to the Court we desire to enter a general exception against your Honor's comments upon the facts in the case as argumentative and prejudicial to the rights of this defendant.

THE COURT: You may retire, gentlemen.

The jury are brought into court.

THE COURT: I have received this communication from you, "Is it permissible to bring in a verdict with a recommendation for mercy in view of the fact that the defendant is a foreigner and possibly unfamiliar with the laws of this State?" Answer, to that question, yes. You may retire.

The jury rendered a verdict of guilty with a recommendation to mercy.

MR. PENTECOST: I ask that the jury be polled.

The jury is accordingly polled, each member thereof assenting to the foregoing verdict.

CASE # 350