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premises 1730 Broadway in the City and County of New York are partly occupied on the first floor, in the basement, as a Russian and Turkish Bath establishment. The premises 1730 Broadway are situated at the northeast corner of 55th Street and Broadway. The entrance to those baths is on 55th Street, on the northerly side of 55th Street, and you enter by going down a few steps into the basement, and then as you pass through the entrance, you pass through the office, and behind the office is a small room containing a buffet or bar, and ice-chest. Then passing on, going in a northerly direction through the Turkish Bath establishment, you come, on the left hand side, to certain dressing rooms, and then pursuing the passage and going a little northeasterly, you come to the hot room and steam room.

Among the rooms there the Turkish Bath establishment is a parlor which is on the southerly side of the Turkish Bath establishment, and runs along the 55th Street side. This parlor opens into a room at the extreme easterly side of the Turkish Bath establishment, and is in the south easterly corner of the premises, and in this room, which is called a lounging or cooling room, there were several cots, and it is in this room that the alleged offense is said to have occurred.

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Now, on or about 12:55, of the morning of the 22nd day of February, 1903, it is alleged that this defendant, who was then undressed and naked with the exception of the ordinary Turkish bath sheet, went into the room there at the southeasterly side of the Russian Bath establishment, and there voluntarily submitted to carnal knowledge with one Charles Chamberlain through the anus; the said Charles Chamberlain introducing into the anus of this defendant his private parts, and going through indecent motions, the defendant, voluntarily submitting. That, at the same time, we will show you, that the said Charles Chamberlain was going through these indecent motions, having theretofore penetrated the anus of this defendant with his private parts or penis, one John Rogers --

MR. SNITKIN: One moment.

THE COURT: Proceed, Mr. District Attorney.

MR. SNITKIN: Does your Honor permit this evidence as to Rogers.

THE COURT: I am not permitting any evidence. The District Attorney is outlying his case to the jury.

MR. SNITKIN: I except.

MR. ELY: (Continuing) One John Rogers had carnal knowledge with this defendant, the defendant voluntarily submitting, through the mouth of said John Rogers, said

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John Rogers taking the genital organ of this defendant in his mouth, and carnally knowing the defendant through the mouth. When we prove these facts, gentlemen of the jury, we shall ask you for a verdict of guilty of Sodomy as charged in the indictment.

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ROBERT H. HIBBARD , 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 I am a patrolman of police.

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 days of February, 1903? A I was, and I am.

Q You are attached how? A I am attached to the office
of the Fourth Inspection District.

Q How were you attached on the 21st and 22nd days of Feb-
ruary, 1903? A I was attached to the office of the Fourth
Inspection District.

Q Where if anywhere did you go on the night of the
21st of February, 1903? A I went to the premises No. 1730
Broadway, located on the northeast corner of 55th Street
and Broadway.

Q That is in the City and County of New York?

A Yes, sir, it is.

Q What part of these premises did you go to? A I went
in the basement of the premises.

Q What, if anything, is situated there in the basement
of the premises? A It is occupied as a turkish bath estab-
lishment.

Q How is it known, if you know? A Known as the Ariston

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Baths.

Q About what time on the 21st day of February, 1903, did you go there? A About 10 o'clock at night.

Q Just state what you did when you went there? A I entered the premises, as I say, about 10 o'clock, I purchased a ticket, or purchased a bath for a dollar. I entered a dressing room to which I was assigned, undressed, went to the hot room and then was scrubbed, and then entered the various cooling rooms of the premises.

Q At the time you went there, did you go with anybody? A I went there alone.

Q I show you this paper and I ask you, if you know, what that is? A Yes, sir.

Q I will ask you who made it, if you know? A I drew it.

Q You drew that at my suggestion? A Yes, sir.

Q And what does that paper purport to represent? A Purports to represent the approximate relation of the rooms that constitute the turkish bath establishment in the basement of the premises 1730 Broadway.

Q You say that was drawn by you? A Yes sir.

Q You had been to the premises on how many occasions before you drew it? A On two occasions before I drew it.

Q Is that a correct representation of the interior arrangement of the Ariston turkish bath establishment situated as you have stated at 1730 Broadway, on the northeast corner

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of 55t h Street and Broadway in the City and County of New York? A It is a fairly correct representation. It may be a little out of proportion, but otherwise it is all right. It shows the relative position of the rooms.

MR. NIX: I offer this paper in evidence.

Received and marked People's Exhibit A.

Q Have you got the points of the compass on that paper?

A No. I have the location of West 55th Street.

Q Just mark the points of the compass on that paper?

A That is about the location of the points of the compass, I believe. (Witness marks the paper).

Q During the time that you were in the turkish bath establishment, did you see anybody that you knew there?

A I did.

Objected to; overruled and exception.

Q Whom did you see there whom you knew and were acquainted with? A I saw Officer Ward, Officer Connolly, Officer Fitzsimmons, Officer Phelan, Officer McGutcheon, and Officer Abbott of the police force of this city.

Q Did you see the defendant there on that night?

A I did.

Q About what time did you see the defendant in the premises 1730 Broadway in the City and County of New York, northeast corner of 55th Street? A The first time I remember of seeing the defendant was about 11 o'clock that night.

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Q How were you then attired? A I was then attired with a sheet. I was naked with the exception of a sheet.

Q How was this defendant attired when you saw him about 11 o'clock? A He was naked with the exception of a sheet.

Q Where was the defendant when you saw him first, on the night of the 21st of february, 1902? A He was in a passage-way in the bath room, in the bath room proper, that is the scrubbing portion of the bath.

Q Just point out on that diagram please where the defendant was when you first saw him about 11 o'clock on that night, and make a blue pencil mark on it, where you first saw him-- you have marked it K, have you? A Yes.

Q Where next, if at all, did you see the defendant in the premises we are talking about, the turkish bath premises, on the night of the 21st of February, 1903? A I saw him in the room which is located in the southeast corner of these premises, the cooling room.

Q Please point out the cooling room that you saw him in? A In this room in the corner (indicating).

Q Just describe the circumstances under which you saw the defendant in this cooling room? A I saw the defendant enter the room from the parlor and walk towards where I was standing -- that is walk between the westerly wall and the end of the east situated in that room.

Q There were cots in this cooling room, at the extreme

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southeasterly end of the bath establishment? A There were.

Q Go on? A I was standing at the window in the southerly wall of the room, and the defendant entered from the parlor.

Q Please take People's Exhibit A, and mark upon the exhibit where you were standing? A I mark it H.

Q When the defendant entered this cooling room?

A I have marked it with the letter H.

Q You say that you were standing by the window, where is the window? A The window is the little -- the pencil mark that juts out from the main wall.

Q The part that protrudes or juts out from the main wall?

A To the south.

Q To the south -- represents the window? A Yes, sir.

Q And the H marked on that People's Exhibit by you is the position you occupied when the defendant entered the cooling room? A When the defendant entered the cooling room.

Q When you entered the cooling room, did you see anybody in there whom you knew? A Yes, sir, I saw Officers Phelan, Fitzsimmons, and the man named Rogers, whom I now know to be Rogers-- at the time I did not know what his name was.

Q Where were Officers Phelan and Fitzsimmons when you entered the room? A They were standing against the westerly wall of the room.

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Q Whereabouts? A About opposite the second and third cots from the south wall of the room.

Q Please mark on that diagram where Officers Phelan and Fitzsimmons were when you entered the cooling room?

THE COURT: It is not necessary to mark all these things, it takes up so much time. Let him state where they were.

MR. ELY: He has already stated that.

B Y MR. ELY:

Q Where was Rogers? A Rogers was lying on the first cot.

Q I ask you where Rogers was when this defendant came in the room ~~lying on the first cot~~.

Q What happened? A The defendant walked towards me. A man whom I know now to be Chamberlain stood in the southwest corner of the room. The defendant walked in and stood between the end of the first cot and the man Chamberlain. Chamberlain's penis was in a state of erection. I saw the defendant stand between Chamberlain and the end of the cot, and I saw the man Chamberlain pull Kregal towards him, and he moved towards Kregal, the defendant, and go through indecent motions.

THE COURT: Strike that out, state what they did.

THE WITNESS: I saw Chamberlain place his penis

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in the arms of this defendant and take and place his right arm around the body of this defendant, and grab this defendant's penis with his right hand and manipulate it backward and forward. This defendant moved the middle portion of his body backward and forward. The man Rogers sat up on the cot.

MR. SMITKIN: I object to anything that occurred between the defendant and Rogers.

THE COURT: State the whole transaction.

MR. SMITKIN: I except.

THE WITNESS: The man Rogers sat up on the cot, moved slowly down towards the end of the cot, sat on the end of the cot and placed his mouth over the penis of this defendant, and this defendant went through the motions of ejaculation, and Chamberlain also went through the motions of ejaculation, and the man Rogers laid down on the cot.

BY THE COURT:

Q What do you mean by ejaculation? A He went through the motions of a man ejaculating the semen from his penis, human semen.

BY MR. HLY:

Q After the occurrence you have just described, state what happened? A The defendant left the room; Chamberlain left the room. Rogers lay down on the cot and I stayed in the room.

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Q About what hour was this? A This was about quarter to one.

Q Did you ever see that man before (Rogers)?

A I have.

Q When? A I saw him on the night of the 21st of February, and in the morning of the 22nd of that month.

Q Is this man a man whom you have referred to in the testimony you have given here? A He is.

Q What is his name? A John Rogers.

Q Just state what happened after the episode you have already testified to? A I remained in the room and this defendant left the room and Chamberlain left the room and the man Rogers stayed in the room and lay on the cot.

Q When next if at all did you see this defendant?

A I saw this defendant several times intermediate, between the time described and the hour of 1:45, when he was placed under arrest.

Q State the circumstances attending this arrest, of this defendant? A At the hour of 1:45, Acting Inspector Walsh and Inspector Brooks and Officer Carlin, entered the premises and I first saw this defendant in the room--

Q What room? A Adjoining the room in which the ice-box and sideboard was located, located immediately in the rear of the office.

Q What room was that? A Dressing room to the west of

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the room in the rear of the office.

Q Point that out? A I first saw him in this room here (indicating).

Q Describe the circumstances, all of them? A Inspector Walsh said, pointing to this man,--

Q Was the defendant present? A Yes, sir -- pointing to this man, he said "Have you any complaint to make against this man (referring to the defendant). I said "I have". He was taken to the 22nd precinct --

Q What else was said at that time in the presence of the defendant? A He was taken then to the 22nd precinct station house in custody of Officer Carlin.

Q Was Officer Carlin there -- who else was there?

A Officer Carlin was there and Inspector Brooks and Acting Inspector Walsh and Captain Landon of the Detective Bureau and Officer Fitzsimmons and Phelan and numerous other officers.

Q When this act which you speak of, which occurred in the southeast room, took place, how far away were you from the defendant? A About as far as I am from the stenographer now.

MR. HIX: We will say that is about a foot and a half.

MR. SNITKIN: Anything you like -- may be six inches, as far as I am concerned.

THE WITNESS: I was about a foot and a half

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from Rogers and just a little bit further from the defendant and just the width of a man from the man Chamberlain.

Q How were you situated with respect to the defendant and Chamberlain at this time, that the occurrence that you have described took place? A A portion of the time I was immediately opposite Rogers, walked down towards -- moved down towards the west wall while this defendant and Chamberlain were going through this act.

Q How far if you knew about were Fitzsimmons and Phelan from the defendant, when this act that you have described occurred? A They were on the other side of this defendant, and Fitzsimmons was only a few inches from the defendant.

Q Have you ever seen this man before? A I have.

THE COURT: The witness has referred to the defendant as this man -- what man do you have reference to now?

MR. KELY: The man who had just come in the room and is now standing at the rail.

THE WITNESS: I have.

BY MR. KELY:

Q When did you see such man? A I saw him on the night of the 21st and the morning of the 22nd of February.

Q Have you referred to this man in the testimony which you have heretofore given? A I have.

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Q And what is the name of that individual?

A Chamberlain.

Q That is the person you spoke of as George Chamberlain?

A He is the person I have referred to as George Chamberlain.

BY THE COURT:

Q Was the defendant naked when he was arrested?

A The defendant was naked when he was arrested, yes.

CROSS EXAMINATION BY MR. SNITKIN:

Q Now Hibbard, you are detailed? A I am not, no, sir.

Q Are you not detailed to the Inspector's District?

A I am assigned to the office of the Fourth Inspector's District.

Q That is a detail, is it not? A It is not.

Objected to as immaterial.

Q How long have you had that temporary assignment?

Objected to as immaterial.

Overruled.

A My present assignment dates from the 19th of December.

Q Now, Hibbard, you are incidentally studying law?

Objected to. Overruled.

A I am.

Q Did you ever, prior to visiting the Arston Baths,

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visit any other bath in this city? A I have.

Q Was there anything secretive about the makeup of this bath?

MR. KELY: I object to the term "secretive".

THE COURT: If the witness understands it, he may answer.

THE WITNESS: I do not understand what you mean by secretive.

BY MR. SNITKIN:

Q Was it a public place, public bath? A It is a public bath.

THE COURT: When you say public, what do you mean by public?

BY MR. SNITKIN:

Q That is, every person who desires to take a bath can go there? A If they pay their dollar.

Q If they pay their dollar? A Yes, sir.

BY THE COURT:

Q Do you mean by a public bath that it is open to public custom? A Yes, sir.

BY MR. SNITKIN:

Q When you went into that room, I refer to the cooling room, where you say the defendant subsequently came in, had Officers Fitzsimmons and Phelan been there? A They were in the room when I entered.

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Q They were there when you entered? A I believe so, yes.

Q Do you know it as a fact -- not do you believe so; do you know it as a fact? A To the best of my memory they were in the room when I entered.

Q How many other men were in that room that night, where you say this act occurred, besides yourself, Kregal, Phelan and Fitzsimmons?

MR. WEL: I object unless he limits the time, when.

THE COURT: The officer is at liberty to name any time that night.

BY MR. SMITKIN: Q I mean in that room when this act occurred-- when this act occurred, how many men were in that room besides yourself, Fitzsimmons, who was there before you arrived there, Phelan, Kregal, Chamberlain and Rogers? A I did not count them, but there were about six or seven.

Q Six or seven men? A I did not say exactly. I said about that number. I did not count them. I am not sure.

Q were they in the same position to see what occurred at that time that you say this performance was going on between Kregal and Chamberlain, as you say?

Objected to.

THE COURT: As far as he could judge.

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Q

THE WITNESS: No, they were not, for we were closer to the defendant than any other person in the room.

BY MR. SNITKIN:

Q They were in the same room? A They were in the same room but further removed.

Q Was that room dark or light? A That room was light, that is you could see.

Q I said, dark or light? A It was light.

Q Was there a chandelier in that room? A There was.

Q Was that chandelier lit up? A It was not lit.

Q If there was no light in that room, I refer to this particular room?--A There was no jet of gas or electric light, but the light shone in from the other room.

Q In that room? A From the other room into that room.

Q In that room --

MR. KLY: I object.

THE COURT: He said there was no gas-- he does not say there was no light -- he said there was no gas or electric light.

BY MR. SNITKIN:

Q There was no gas burning in that room where this act occurred? A No.

Q When you say the defendant came into that room, did he have a sheet over him? A Had a sheet over his shoulders.

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yes.

Q Something like this (indicating)? A Well, I don't know what that is.

Q I will show it to you -- this is a sheet -- will you take it for granted that it is?

MR. NELX: I object to that.

BY MR. SNITKIN:

Q This is a sheet? A He had a sheet over him, an ordinary sheet that is used in a turkish bath.

Q About the same dimensions as this? A As near as I can judge from being folded up.

Q Was it this way, was it around him this way?

A The sheet was over his shoulders.

Q Like that (indicating)? A Thrown over his shoulders.

Q Like this (indicating)? A Not exactly like that, no, it was perhaps more loosely thrown.

Q Like this? A About like that.

Q Just look at it, was it like this? A About like that,--I didn't notice particularly just how he held this sheet when he entered the room.

Q Is that right (indicating), just like that?

A I don't say just like that.

Q About like that? A I say it was about like that-- it was over his shoulders, but I wouldn't say exactly, for

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I didn't notice exactly how the sheet was placed.

Q This portion of the sheet was at his sides?

A A portion of the sheet was at his side.

Q You saw Chamberlain lift up the sheet? A Chamberlain lifted up the sheet, yes.

Q While the sheet was thrown that way, something like that, Hibbard lifted up this portion? A No, he did not.

Q Which portion? A Hibbard did not lift up anything.

Q I beg your pardon, I got you confused, I mean Chamberlain -- Hibbard wouldn't do that -- I mean Chamberlain lifted up the rear portion of the sheet? A Of the sheet, yes.

Q That would be in this condition, the two sides falling, both of these ends falling on the side?

MR. RLY: I object to the counsel testifying.

BY MR. SNITKIN:

Q From where you were standing, the way this defendant was dressed with the sheet, the ends falling to the sides, you want this jury to believe that you actually saw the insertion of the penis, or the penis perforating the anus?

MR. RLY: I object to the form of the question.

THE COURT: I sustain the objection to the form of the question.

Exception.

BY MR. SNITKIN:

Q In the manner I have indicated to this jury with the

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sheet thrown loosely about Kregal, uplighted by Chamberlain in the centre, the ends falling to the sides, is it a fact that you saw the actual insertion or perforation of the penis in the anus? A At the time Kregal had his penis in the anus of this defendant, the sides of the sheet did not hang down.

Q It did not hang down? A They did not, nor have I testified to that fact.

Q Did you testify Kregal's penis was in Chamberlain's anus -- read the last answer.

THE COURT: There is no necessity. You heard his testimony.

The trouble is you are mixing up your questions in relation to the witness's testimony and in relation to your own illustration with the sheet.

BY MR. SNITKIN :

Q Kregal wore the sheet as I have described to you, or as near to it? A When he entered the room.

Q You were standing a foot and a half away from Kregal? A At one time, yes, I was about a foot and a half away.

Q At the time that you say this performance was being done by Chamberlain and Kregal? A This performance took several minutes and I stood at different distances from this defendant at different times during the performance of this act.

Q When you entered this room had Chamberlain been there?

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Objected to.

Q Was Chamberlain there when you entered the room?

A He was.

Q Chamberlain, as I understand you, was standing close to the wall? A Yes, sir.

Q Rogers was at the end of the cot -- A Well --

MR. KELY: I object. I cannot understand when he is referring to.

THE WITNESS: At what portion of the act do you refer to?

BY MR. SMITKIN:

Q I am now referring to the act between Chamberlain and Kregal.

Q At which part of the act?

Q Any performance that you like? A Kregal was lying on the cot -- or Rogers was lying on the cot.

Q I ask you, didn't you testify, or is it a fact, anyway you like it, that Chamberlain was standing close to the wall, is that right? A Yes, sir.

Q Rogers was sitting at the end of a cot, is that right? A At the conclusion of this act, yes.

Q Before that time, where was Rogers? A Lying on the first cot.

Q Now, Kregal walks into this room? A He walked into

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the room.

Q And takes a position immediately between Chamberlain and Rogers, is that right? A Not with military precision. He walked slowly in but easily.

Q You want to be very exact -- he walks in at any rate? A He walked in.

Q And takes his position between Chamberlain and Rogers? A Exactly.

Q Erect? A Standing on his feet.

Q There were other men who were in that room that night, five or six other men -- did you arrest any of those men?

A I believe there was one other man arrested that was in that room, but I was not sure he was in there or not, but if he was he was lying on the second cot from the other wall, but I am not positive about him being in there.

Q How many men did you charge with the crime of sodomy between Rogers and those other men that you arrested, what was the number?

Objected to as immaterial.

Objection overruled.

A There were nine men arrested charged with the crime of sodomy with Rogers. That is, on my evidence. There was ten altogether.

Q You made an affidavit in the Magistrate's Court

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charging Rogers with having committed the crime of seducy
with a man by the name of Thorn?

Objected to.

THE COURT: I think it is immaterial.

MR. SNITKIN: For the purposes of cross
examination.

THE COURT: No.

BY MR. SNITKIN:

Q In that affidavit, didn't you say -- that is, the
affidavit charging Rogers with committing the crime with
Thorn, that he had committed that crime with eight other men?

Objected to.

THE COURT: Show the affidavit.

MR. SNITKIN: I call upon the District Attorney
to produce the affidavit.

MR. REX: I have not got the affidavit.

THE COURT: There comes the question -- go on,
Mr. Snitkin.

MR. SNITKIN: My clerk tells me he was down
stairs and asked for the affidavit and they said it
was up here. I want to see that affidavit.

THE COURT: I cannot answer those questions.

The affidavit in the case of the People against
Rogers is furnished to Mr. Snitkin by the clerk.

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BY MR. SNITKIN:

Q Officer Hibbard, just look at this affidavit and state to this jury and his Honor whether this is your signature on this affidavit? A It is.

Q This affidavit, you say with eight other men?

MR. HLY: I object.

THE COURT: I exclude the question-- go on and lay the foundation.

BY MR. SNITKIN:

Q Did you arrest a person by the name of Carr charging him with sodomy between himself and Rogers? A I did.

Q What became of Carr?

Objected to as immaterial. Sustained and exception.

Q When was the complaint brought against Kregal --

MR. SNITKIN: I withdraw that question.

BY MR. SNITKIN:

Q Did you draw the complaint or formulate the complaint against Carr first, or against Kregal first?

Objected to.

Sustained and exception.

BY MR. SNITKIN:

Q Did you charge -- do not answer the question until Mr. Hly objects to it -- did you charge Carr with the crime

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of sodomy in the 54th Street Court?

Objected to. Sustained and exception.

Q Is it not a fact, after drawing this affidavit that I held in my hand against Rogers, when you formulated the complaint against Carr charging him with sodomy and he was discharged, that you then formulated a complaint against Kregal?

Objected to. Sustained and exception.

Q Do not answer this question -- Carr was discharged?

Objected to. Sustained and exception.

Q Now Hibbard, when you went into that room where you say this act occurred between Kregal and Chamberlain and Rogers, did you have your glasses on? A I did.

Q Were you in the steam room that night? A I was not.

Q At no time? A At no time.

Q Sure about it? A Sure about it, until after the arrest was made.

Q What is that? A Until after the arrest was made, when I was dressed I looked in the steam room, but not before that.

BY THE FIFTH JUROR:

Q What is the difference between the hot room and the steam room?

THE WITNESS: The hot room is heated by steam pipes, dry steam, the temperature is about 145, and

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the wet steam room is about the same temperature, heated by wet steam, by the steam being blown into the room through open radiators, so that the place is foggy and misty and wet. One is the dry hot air and the other the wet hot air.

BY THE FIFTH JUROR:

Q Are they separate rooms? A Separate rooms and divided by a partition.

THE COURT: Point them out to the jurors.

THE WITNESS: The hot room is divided from the steam room by a partition and this little space here represents a door that opened both ways, opening and closing door, and the only entrance to the steam room was from the hot room into the steam room and from the steam room back into the hot room.

BY MR. SNITKIN:

Q How many men were in that bath that night?

Objected to. Overruled.

THE COURT: Answer it, as far as you know.

A About 75 or 80.

BY MR. SNITKIN:

Q were you watching every person there? A Not every person, no.

Q Not every person -- were you in the steam room or in

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the hot room at any time? A I was in the hot room.

Q You were in the hot room? A Yes, sir.

Q Then where did you go? A I went from there into the passageway between the bath rooms and the tank.

Q Then you entered into this room where you say the act occurred between Kregal and Chamberlain? A No, then I entered the scrubbing room and was scrubbed and rubbed.

Q Then you entered that room? A No.

Q Where were you then? A I went then into the hallway and went through the hall to the room back of the office. There I purchased a cigar and --

Q However, you did go into the room? A I went into the room several times during the course of the night.

MR. ELY: You refer to the cooling room?

MR. SNITKIN: Where this act occurred, wherever he may designate it as.

BY MR. SNITKIN:

Q Were there a pair of portiers over the door of that little room, or of that room where you say this act occurred?

A I am not sure whether there was or not.

Q Will you swear that it was not there? A I will -- I won't swear one way or the other. If the portiers were there they were pushed well back so they did not attract my attention at all.

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Q So there was a pair of portiers? A I did not say there was. I said if there were a pair there they were pushed so far back that they did not attract my attention. I am of the opinion that they were not.

Q Your opinion is that they were not?

THE COURT: That is only an opinion. Strike out the witness's expression as to his opinion.

BY MR. SNITKIN:

Q Let us assume now, to illustrate to the jury, that this is the parlor, that room there -- this adjoining room is where the act occurred, you say there was no light in that room but the reflection for this room, is that right?

MR. KELY: I would like to have this room and that room designated, because the record cannot speak.

MR. SNITKIN: We will designate it on the diagram.

MR. KELY: I object to that diagram being used. It is not in evidence. This is in evidence (indicating People's Exhibit A.)

BY MR. SNITKIN:

Q I will take your, certainly -- this is the parlor?

A I will have to take your word, for I cannot see from there.

Q Cannot you see? A The marks are too small.

Q There, can you see? A That is the parlor.

Q And these are the cooling rooms, or this is the cooling

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room? A That is the cooling room in which the act occurred.

Q This is where the act occurred (indicating)?

A Yes, sir.

Q There is no gas light or electric light in this room?

MR. KELY: I object to that. He has already testified to that.

THE COURT: I sustain the objection to that form of question. The witness has stated there was no gas jet burning. He did not say there was no gas light.

BY MR. SNITKIN:

Q Was there a gas light?

THE COURT: Do not let there be a misunderstanding. The witness stated there were no jets of light throwing immediate light in that room, but there was light in that room from other sources.

BY THE COURT:

Q Is that right? A That is exactly right, your Honor.

MR. SNITKIN: That is sufficient, that is just what I want to get before the jury.

BY MR. SNITKIN:

Q The light that was in that room came from the parlor?

A Yes, sir.

Q Do you wear glasses all the time? A Practically all

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the time, yes.

Q Are you near sighted? A No, sir.

Q You had your glasses on when you entered that room?

A I did.

Q When did the raid take place?

Objected to the form of the question.

Q When did your officers arrest these men in the premises, what hour? A At the hour of 1:45.

BY MR. ELY:

Q In answer to the question by defendant's counsel, asking you if the defendant was standing erect, you said that he was standing on his feet? A On his feet.

Q When the penetration by Chamberlain of this defendant that occurred, as you have stated, how was the defendant standing on his feet? A Just at the moment the actual penetration took place, I cannot testify to; the defendant was moving backward and forward, going through the motions that are usual in sexual intercourse. As I walked down towards the west wall, as I have described, I looked down and I saw the penis of Chamberlain in the anus of this defendant. Just at the exact moment the penetration took place, I cannot state just what position he was in.

Q He being the defendant? A He being the defendant.

Q How was the parlor lighted? A There was a chandelier in the centre of the room with numerous tips lighted, perhaps

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eight or ten. I did not count them exactly. A large chandelier

Q Was the light bright or otherwise in the parlor?

A Very bright.

Q You have testified that there was a window in this cooling room, at the southeast corner, where the act occurred; did you notice that window? A Yes, sir.

Q What kind of glass was in that window? A I could not see, the curtain was drawn, shade was pulled down.

Q Had you ever seen the defendant before the night of the 21st day of February, 1903? A I had.

Q Why do you wear glasses? A I have astigmatism.

Q You say you are not near sighted? A No, sir.

Q You are not far sighted? A No, sir, I am not far sighted.

Q The glasses then are simply worn to rest the eyes?

A Worn to take the strain off the muscles of the retina to prevent conjunctivitis.

BY MR. SNITKIN:

Q Did you read the minutes of the first case before you went on the witness stand?

Objected to as immaterial. Sustained.

Q You did not say you saw this defendant there before the 21st, on the first trial, did you?

Objected to. Sustained and exception.

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THE COURT: Of what use is there to waste all this time. This witness has taken a great deal of time.

MR. SNITKIN: I want to show to this jury that this Officer-

THE COURT: You must not state what you want to show to the jury. The District Attorney on his re-direct asked but a few questions, as to light in the parlor and as to the posture of the defendant. You can recross this witness upon those matters. I will not permit the case to be reopened.

MR. SNITKIN: The learned District Attorney also asked him whether he ever saw him before.

THE COURT: You can examine him upon any question the District Attorney brought out.

BY MR. SNITKIN:

Q As matter of fact, did you not testify at the last trial of this man, that that was the first time you saw him in that bath? A I did not.

Q You did not? A I did not.

MR. SNITKIN: Will your Honor permit me to ask that question, as soon as I find it in the minutes -- to recall him so as to save time?

THE COURT: I cannot wait for counsel to go

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through the whole record of another trial.

THOMAS F. PHILLAN , called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. HLY:

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 days of February, 1903? A Yes, sir.

Q Attached to what precinct? A The Fourth Inspection District.

Q And you are so attached now? A Yes, sir.

Q Where, if anywhere, did you go on the night of the 21st day of February, 1903? A To the Ariston Baths.

Q Where are those baths located? A 1730 Broadway.

Q What street corner? A The northeast corner of 55th Street and Broadway.

Q In the City and County of New York? A Yes, sir.

Q About what hour did you get there? A I got there at nine o'clock.

Q Did you go there in company with anybody or alone?

A I went there alone.

Q What, if anything, did you do when you got there?

A I entered the baths, and at the desk I paid a dollar to the

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man at the desk and was assigned to a room, a dressing room. I went in and undressed, put a sheet about me and took a bath.

Q Did you see anybody at the premises, the Ariston Baths establishment, on the evening of the 21st of February, 1903, whom you knew? A Yes, sir.

Q Who are some of them? A I saw six officers there I knew.

Q Who are the officers? A Officer Fitzsimmons, Hibbard, McCutcheon, Abbott, Ward, and Connelly.

Q Did you see the defendant, Abraham Kregal, there on the 21st of February, 1903? A Yes, sir.

Q I show you this diagram, People's Exhibit A, and I ask you to look at it and see if you know what that is? A That is a diagram of the baths.

Q Of the Ariston Baths that we are speaking of here? A Yes, sir.

Q Where did you first see the defendant on the night of the 21st day of February, 1903, in the Ariston Baths, in the City and County of New York? A I saw him in the parlor of the bath, what is called the parlors.

Q In that room (indicating)? A Yes, sir.

Q In the parlor of the bath? A Yes, sir.

Q How is this parlor lighted, or was this parlor lighted on that night? A Yes, sir, it was lighted.

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Q How was it lighted? A By a chandelier in the middle of the room.

Q Was it very light or very dark, or how was it in the parlor? A Very brilliantly lighted.

Q Who, if anybody, was with you when you saw this defendant in the parlor of the Ariston Baths on the night in question? A I was alone at that time.

Q About what hour was this? A That was about 11 o'clock.

Q What did the defendant do when you saw him in the parlor? A He was standing there.

Q How was the defendant dressed when you saw him in the parlor of the Ariston Baths on the date that we are now discussing? A He was naked with the exception of a sheet about him.

Q When, after seeing him sometime about 11 o'clock in the parlor, did you next see him, he being the defendant?

A I saw him in the southeasterly room of the bath about 12:45.

Q And who if anybody was in the southeasterly -- what is the southeasterly room that you saw this defendant in about 12:45, as you state? A Cooling room with a number of couches in it.

Q Point to the cooling room that you saw the defendant

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in at 12:45? A That is the room, that corner (indicating).

Q 12:45 A. M. A Yes, sir.

Q In the morning? A Yes, sir.

Q That was the morning of the 22nd of February?

A Yes, sir.

Q 1903? A Yes, sir.

Q Who, if anybody, did you see in the cooling room who you knew? A Officers Fitzsimmons and Hibbard.

Q Who, if anybody, did you see in the cooling room whom you subsequently knew? A I saw this defendant and a man I afterward found out to be John Rogers.

Q Who else? A And I saw the defendant, John Rogers, and a man named Chamberlain.

Q Now, what did you see the defendant do if anything when he was in the cooling room about the hour you have stated-- who is that man that has just come into the court room in company with the officer? A He looks like Rogers -- didn't have a beard --

Q Is that the man you designate as Rogers, whom you saw in there? A Yes, sir.

Q Go on? A I was standing at the westerly wall of that room, that is the cooling room, alongside of Officer Fitzsimmons, when Officer Hibbard came in and stood at the corner

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of the room and shortly after the defendant came in, walked by me. He stood against the westerly wall of the room between Officer Fitzsimmons and Officer Hibbard, and Charles Chamberlain got behind the defendant and I noticed his penis was in a state of erection at that time.

Q Whose penis? A Chamberlain's, and he caught hold of the defendant here and placed his penis in between the buttocks of the defendant. Then he placed his arm around the body of the defendant, the right arm it was, and caught hold of the defendant's penis.

Q That is, Chamberlain did? A Chamberlain did, and made indecent motions back.

Q What motions did he make? A Back and forth.

Q What do you mean by back and forth? A Waving his body back and forth? A Yes, sir.

Q Go on? A Then John Rogers sat up on the couch and he took hold of the defendant's penis in his mouth, held it there for several moments. The man Chamberlain then stood against the wall, a few minutes after this defendant walked out into the parlor. I followed him out into the parlor and took a better look at him so I would know him if I saw him again.

Q At any time from the time you saw the act performed between the defendant and Chamberlain, until you saw the

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defendant in the parlor, did you lose sight of this defendant at all? A No, sir.

Q You are certain this is the man who with Chamberlain performed this act-- this defendant? A That is the man I am sure.

Q What happened after that? A Well, I walked around the bath, remained in the bath until about 1:45. The bath was then raided by Acting Inspector Walsh and placed everybody under arrest.

Q What, if anything, was done in connection with this defendant, that is what I want? A After he got in the parlor, I had nothing more to do with him. I knew my man.

Q At 1:45, what, if anything, did you have to do with him? A Placed him under arrest then.

Q Placed who under arrest? A This defendant.

Q What was said by anybody in the presence of the defendant at the time that you placed him under arrest?

A Nothing.

Q What did you say? A Nothing.

CROSS EXAMINATION BY MR. SNITKIN:

Q Nothing was said? A No, only that we placed him under arrest, that was all.

Q What time did you get to the bath? A About 9 o'clock.

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Q Was Hibbard there at that time? A I did not see him.

Q What time did you see Hibbard? A I saw him, I should judge it was a little after ten.

Q Was that the first time you were at that bath?

A Yes, sir.

Q Now, this room where it is alleged this performance was gone through between Chamberlain and Rogers and Kregal, contained how many cots? A About five or six.

Q How many other persons, not officers, were in that room, when this act was performed? A There was about five or six.

Q Were they in the same position to see what was going on as you were?

Objected to.

THE COURT: So far as you can judge?

THE WITNESS: Yes, sir, they were, as far as I can judge.

BY MR. SNITKIN:

Q That room was not lit by gas or electricity? A Only from the next room.

Q From the next room? A Yes, sir.

Q Was there a pair of portiers over that room, that is in this room where the act occurred? A I did not see any.

Q You did not see any? A No, sir.

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Q When you entered that room, where this act occurred, were Officers Fitzsimmons and Hibbard there? A No.

Q Who was there first? A Fitzsimmons and I entered about the same time.

Q Was Chamberlain there at that time? A Yes, sir.

Q And Rogers? A Yes, sir.

Q Then you saw Kregal coming in? A Yes, sir.

Q Did he have a sheet thrown over his body? A Yes, sir.

Q Something similar to this (indicating)? A Yes, sir, something similar to that.

Q And were the ends of the sheet hanging down towards his side? A Hanging down in front of him.

Q In front of him? A Yes, sir.

Q How far were you from Kregal when this performance took place between Chamberlain and Kregal? A I was a few inches only.

Q A few inches away? A Yes, sir.

Q Now Officer, will you swear, of your own knowledge, that you saw the penis of Chamberlain, enter the anus of Kregal? A No, I wouldn't swear to that.

BY THE COURT:

Q To what do you testify with reference to anything you saw occur between Kregal and Chamberlain? A He had his penis in between the buttocks of this man.

Q Did you see that? A Yes, sir, his penis was lost to

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my view then.

Q How long did that continue, that condition, so far as your best judgment enables you to state? A A few minutes.

Q During that condition, or while the relative positions were maintained by Kregal and Chamberlain, did either of the bodies move? A Yes, sir.

Q Which of them? A Both of them, that is, Chamberlain and Kregal.

Q And while that motion continued, did they remain in the same relative position that you have described?

A Yes, sir.

Q What was the motion? A They were moving back and forth.

Q Each one? A Yes, sir.

Q Did you see the naked bodies of each touch?

A Yes, sir.

Q Was there any clothing or anything between the naked body of Chamberlain and the naked body of the defendant?

A No, sir, there was not.

BY MR. SNITKIN:

Q The sheet was on Kregal? A He had it raised up around his shoulders.

Q When this that you claim was committed between the buttocks, and which you now say you cannot swear was inserted

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in the anus, was that committed in a standing position?

A Yes, sir.

Q In a standing position? A They were both standing, yes, sir.

Q You now again say that you did not see the penis of Chamberlain enter the anus of Kregal?

THE COURT: He has already testified to that.

MR. SWITKIN: I want the jury to get the benefit of that answer.

MR. REX: I object.

THE COURT: I sustain the objection. It has been already answered and the jury understands.

MR. SWITKIN: That is all.

NORMAN J. FITZSIMMONS, called as a witness
on 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? A I am.

Q You were so connected on the 21st or 22nd days of
February, 1903? A I was.

Q How were you attached? A Attached to the Central
Office and assigned to duty in the fourth Inspection District.

Q In connection in with your duties where, if anywhere,
did you go on the night of the 21st of February, 1903?

A To the premises known as the Aristen baths 1330 Broadway.

Q That is on the northeast corner of 55th street
in the City and County of New York? A Yes, sir.

Q About what time in the evening did you go to the
premises that you have just mentioned? A About 9:30.

Q Who, if anybody, did you go there with? A I went
there by myself.

Q What did you do when you got there? A I paid my
admission to the baths and was assigned to a room and undressed and I took a regular Turkish bath.

Q Who, if anybody, did you see there on that night, that
you knew? A I saw Officer Hibbard, Phelan, McCutcheon,
Abbott, Ward and Connolly.

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Q And did you see this defendant? A I did.

Q On that night, the 21st of February, 1903?

A Yes, sir.

Q When you took your bath, you undressed, and how were you? A Naked, except for a bathing sheet.

Q When you saw the defendant here, in what state of dress or undress was he in? A He was naked except for a sheet.

Q About what hour in the evening did you see this defendant? A First?

Q Yes. A About 11 P. M.

Q Where was he? A He was in a room off the office.

Q And he was then in the state of undress that you speak of? A Yes, sir.

Q I show you this paper, Exhibit A, and I ask you if you recognize that? A I recognize it as a diagram of the premises.

Q When you first saw the defendant on the evening of the 21st of February, he was where? A He was in this room here. Here is the entrance to the office (indicating).

Q He was in the room behind the office? A Yes, sir.

Q What is that room? A It is a small room with an ice chest in it and sideboard.

Q That was about what time? A About eleven o'clock.

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Q When next if at all did you see the defendant on the evening of the 21st of February, 1903? A I seen him at about 12:45 A. M. on February 22nd.

Q Where did you see him then? A Easterly room-- southeast corner of the bath.

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

Q Point it out on the diagram? A This one here (indicating).

Q Who were there in that room, if anybody that you knew when you saw the defendant Kregal in the southeasterly cooling room, in this Russian bath establishment? A Officer Phelan and Hibbard.

Q That room opens off of the parlor, does it not?
A Yes, sir, adjoins the parlor.

Q Was the parlor lighted or dark? A The parlor was lighted.

Q How was it lighted? A By about ten gas lights.

Q Was it brilliantly lighted? A Yes, sir.

Q Or dark? A Brilliantly, very brilliantly.

Q Very brilliantly lighted? A Yes, sir.

Q What light if anything was there in the southeast cooling room, in which you state that you saw the defendant?

A No light lit in the room. There was light in the room from the parlor which adjoins it.

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Q How was the parlor connected with the cooling room, southeast cooling room? A By a very wide door.

Q What did the defendant do when he entered this cooling room, southeast part of the Turkish bath premises, that you saw? A He entered the room and passed by me.

Q Where were you? A I was standing at the left, immediately to the left of a man whom I have since found out to be Charles Chamberlain.

Q About where in the room? A About six feet, to the right of the door, entrance.

Q That was along the westerly wall? A Yes, sir.

Q Just describe what the defendant did when he came in there, when he came into this room? A He walked by me and took a position in front of a man whom I have since found out to be Charles Chamberlain; remained there. I seen this Charles Chamberlain take his penis which was in a state of erection at the time, and place it in the anus of the defendant. While he was so doing, he placed his right arm around the person of the defendant, and took the defendant's penis and manipulated it a little while. I seen a man whom I have since found out to be John Rogers, who was lying on a couch, directly in front of the defendant, take the penis of the defendant and place it in his mouth.

Q How far off were you from the defendant when you say

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that this person Chamberlain put his genital organ in the anus of the defendant? A Immediately-- my elbows were touching the person of Chamberlain.

Q How were you situated relatively, to Chamberlain--- how were you standing relatively to Chamberlain and the defendant? A Why, Chamberlain stood up against the wall here, and I stood right next to him.

Q You were facing Chamberlain? A Sort of half turned. My whole body was not up against the wall, but just a sort of half turn. I placed myself in a position that I could see everything.

Q What happened after that? A The defendant Chamberlain went through indecent motions.

Q Do not say indecent-- describe them? A Well, backward and forward, and Rogers moved his head backward and forward, while he had the penis of the defendant in his mouth.

Q Well? A After about a period of three minutes, why---

Q Talk up. A About three minutes after a period of about three minutes, after these motions had been gone through they separated, the three of them, and I noticed that the penis of Chamberlain was not in a state of erection; I also noticed that the penis of the defendant was not in a state of erection. He left the room.

Q Who left the room? A Both the defendant and Chamberlain and I followed them out to this brilliantly lighted room for

the purpose of being enabled to identify them positively.

Q From the time that you say this act between Chamberlain and the defendant occurred, until the time that you followed the defendant out of this cooling room into the parlor and saw him in the parlor, he being the defendant, did you for a moment lose sight of the defendant? A No, sir, not for a moment.

Q Are you positive this defendant is the person that you saw going through the act that you have just described with the person called Chamberlain? A I am positive.

Q On the morning of the 22nd day of February, 1903, at the Aristen baths, situated as you have described them? A I am positive.

Q Now, this was about what hour? A About 12:45 A. M.

Q What happened after that with respect to this defendant that you know? A Of course, I did not pay any particular attention to him.

Q After that? A After the identification?

Q Yes. A There was nothing happened until about 1:45 when Inspector Walsh and his staff of officers came in and raided the place.

Q What was done, as far as you know; what happened at the time of the arrest of this defendant? A Why, I found this defendant in his room.

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Q In what room? A In his own room, and told him he was under arrest. He was partly dressed at the time.

Q What? A He was partly dressed at the time-- that is he had his shirt and underwear on, outside shirt and underwear, and socks, did not have the shoes on, or trousers at the time. I placed him in a room with a number of other persons who had been picked out as being under arrest. That is about all.

Q Did the defendant say anything at the time that you arrested him? A He asked me upon what charge I placed him under arrest.

CROSS EXAMINATION BY MR. SHITKIN:

Q He asked you upon what charge? A Yes, sir.

Q When you said he was under arrest? A Yes, sir.

Q How many men were in that bath that night? A 75 about.

Q Now, Officer Fitzsimmons, this room where you have stated to the jury this act occurred between Chamberlain and Kregal was that room brilliantly lighted?

A No, sir.

Q It was dark? A No, sir.

Q When you saw Chamberlain in that room was it dark?

A No, sir.

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Q You remember being in the magistrate's court in the West 54th street Court? A Yes, sir.

Q Do you remember being asked this question, page 11, "When you saw Chamberlain there in that room, was the room brilliantly lighted? A No, sir".

THE COURT: What question do you ask this witness-- what is your question?

BY MR. SNITKIN:

Q When you saw Chamberlain---

THE COURT: I will not permit the examination in that way. You must show that the witness had made a different statement from what he makes now.

MR. SNITKIN: I am showing it now.

MR. ELY: Not so far.

THE COURT: You must ask him a specific question and then show he has contradicted that, if at all.

BY MR. SNITKIN:

Q Was there a chandelier in that room?

MR. ELY: What room?

BY MR. SNITKIN:

Q In the room where this act took place? A Yes, sir.

Q Was there any light from that chandelier? A No, sir.

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Q Was there a pair of portieres over the door leading from the parlor into that room where the act occurred? A I believe there was.

Q Are you sure? A I wouldn't say positively.

Q Let me ask you, was not this question asked of you in the Magistrate's Court---

THE COURT: He does not say anything now--- he is not positive one way or the other.

MR. SNITKIN: I want to show that he said something positively.

MR. ELY: I object to that.

THE COURT: In relation to the portieres I do not see that it makes much difference anyway, but proceed and ask the question.

BY MR. SNITKIN:

Q Were there folding doors or portieres? A I said I believed there was portieres.

BY MR. SNITKIN:

Q You were asked this question "Were both folding doors open leading to this room", and you said "Yes, with portieres over.

Q These portieres were separated? A Yes. They were hanging down. Hanging down and separated in the center by one of these chenille cords-- that room where the act was committed"; is that so? A That is proper.

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BY MR. SNITKIN:

Q How many other men not police officers were in that room where the act occurred, besides yourself, Hibbard, Phelan, the defendant, Chamberlain and Rogers? A About five or six.

Q Were they in the same position to see what occurred there between Chamberlain and Kregal as you were?

MR. ELY: As far as you know.

THE WITNESS: As far as I know they were.

BY MR. SNITKIN:

Q When you saw this act committed between Chamberlain and Kregal, was that act committed standing up? A Yes, sir.

Q Did Kregal show any signs of pain or distress?

A No, sir.

Q Did he utter any scream? A No.

Q Or make any outcry as though in pain or suffering?

A No, sir.

Q Now, Officer Fitzsimmons, did you look down to see whether Chamberlain put his penis in Kregal's anus? A What do you mean,--- look down from where I was standing?

Q Yes. A Yes, I had my eyes down in that direction.

Q Did you get down and look? A Do you mean "steep down?"

Q Yes. A No, I did not.

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Q You did not? A No.

Q Will you swear, Fitzsimmons, as a man that you saw Chamberlain insert his penis in the anus of Kregal, now, of your own knowledge? A What do you mean? Actually enter it?

Q Yes. A I seen his penis between the two cheeks.

Q That is it, between the buttocks? A In an erect position.

Q Between the buttocks, that is what I want to know--- you know what the buttocks are? A Yes, sir.

Q The cheeks of the rectum? A Yes, sir.

Q Between the buttocks? A Yes, sir.

Q But you would not swear you saw his penis perforate his anus; will you swear that as a man? A I seen his penis between his buttocks.

Q That is not the question here; will you swear, Officer Fitzsimmons,-- don't look at the District Attorney-- his Honor is there to protect you-- will you swear as a man that you saw Chamberlain's penis perforate Kregal's anus, that is the question? A I won't swear I seen it enter it.

RE DIRECT EXAMINATION BY MR. ELY:

Q You say that the defendant, at this time, that he and Chamberlain had this connection that you have described, was standing on his feet? A Yes, sir.

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Q In what posture was he standing, how standing?

A He was standing in an erect position-- what I mean by an erect position, I do not mean to throw back your shoulders or to-- I should judge in a position like this (indicating).

Q Slightly leaning forward? A Well, what I should judge to be a natural position.

MR. SMITKIN: Natural position.

MR. ELY: I object to the interruption.

BY MR. ELY:

Q And when they were together, how were they together; was there anything between the body of the defendant and Chamberlain? A Only on the body of the defendant, on his shoulders, was the sheet, drawn up.

Q Was there any covering between the body of the defendant and Chamberlain at the part of his body-- of Chamberlain's body, where the genital organ is? A No, sir, Chamberlain had lifted the sheet of the defendant.

Q And there was nothing on the body of the defendant in the way of covering over his posterior or his anus?

A No, sir.

BY MR. SMITKIN:

Q Chamberlain also had on a sheet like this (indicating)?

A Yes, sir.

BY THE COURT:

Q It is a very disgusting thing to question about, but

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we must do it. When you say that you saw Chamberlain's person between the buttocks of the defendant, did the penis of Chamberlain disappear from your view? A About half way.

Q About half way? A Yes, sir.

Q At the time, was there any clothing, any obstacle between the naked body of Chamberlain and the naked body of the defendant? A Nothing that would obstruct the commission of the act, the only obstruction was this sheet drawn up over the shoulders.

Q I mean, in so far as the particular places of the body concerned; was there anything between the two bodies?

A No, sir.

Q Nothing between the two bodies? A No, sir.

Q How long do you say they remained in that position?

A A period of from three to five minutes.

Q Did I understand you correctly to say that while they were in that position that Chamberlain reached around and caught the person of the defendant? A Yes, sir.

BY MR. SNITKIN:

Q How many times have you been in this bath? A Three times.

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

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ARTHUR C. DODDS, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q That is your true name? A Yes, sir.

Q On the night or morning of the 22nd day of February, 1903, did you give any other name than you have now given here? A Yes, sir.

Q What name was that? A Charles Chamberlain.

Q George Chamberlain? A Charles Chamberlain.

Q Where were you on the evening of the 21st day of February, 1903? A I was at the Turkish bath in 55th street.

Q Where was the Turkish bath? A In 55th street between Broadway and 7th avenue, I think it is.

Q What Turkish bath is that known as, the Ariston?

A Yes, sir, I believe it is.

Q At what hour did you go there? A It was about quarter after eleven, between quarter after and half past eleven.

Q That was on Saturday night? A Yes, sir.

Q Did you see that defendant at the bath on the 21st of February, 1903? A Yes, sir.

Q Where did you see him? A I saw him in a small room in the southeast corner of that bath.

Q What room is that, what kind of a room was that? A It

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was a room with four or five couches in it for sleeping after the bath, cooling off.

Q What, if anything, occurred between you and that defendant at the time that you saw him in this cooling room at the southeast corner of the premises at 55th street and Broadway, known as the Ariston baths? A What happened?

Q What did you do-- what if anything happened between you and this defendant? A I committed---

Q Just describe what you did? A I went into that room and was standing in the-- at one side of the room by a jog on the west wall of the room, and was standing there with my back to the wall and Kregal came in and stood in front of me.

Q This defendant? A Yes, sir, and I put my penis into his anus, and after that I went out.

Q You penetrated the anus of this defendant with your penis? A Yes, sir.

CROSS EXAMINATION BY MR. SNITKIN:

Q What is your true name? A Arthur Chamberlain Dodds.

Q What is your true name?

Objected to upon the ground that he has testified to it three times.

THE COURT: He has testified that it is Arthur

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Chamberlain Dodds.

Q It is not Dodge? A Dodds.

Q You pleaded guilty? A Yes, sir.

Q Chamberlain or Dodds, and you have not been sentenced yet? A No, sir.

Q You are awaiting your sentence? A Yes, sir.

Q Pending the determination of this case?

Objected to. Objection sustained. Exception.

Q Is this testimony you give voluntary?

THE COURT: Simply the fact is that he is awaiting sentence.

BY MR. SNITKIN:

Q Is this voluntary testimony you give of your most disgraceful and humiliating conduct?

MR. ELY: I object to that description?

THE COURT: I sustain the objection to the form of the question.

BY MR. SNITKIN:

Q Is this testimony you are now giving-- don't look at me-- is this voluntary? A Why, of course.

Q Was any consideration promised you at all for testifying as you do now? A I do not understand what you mean.

Q You don't understand-- I will repeat my question-- was any consideration promised you by the District Attorney for this testimony, in consideration of the testimony that

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you would give against Kregal? A No, sir.

Q Never, at no time? A I expect the law to take its course.

Q You expect the law to take its course? A Yes, sir.

Q Did you speak to anybody in the District Attorney's office? A I have been called to the District Attorney's office.

Q You have been called to the District Attorney's office-- yet you expect no consideration? A I don't know anything about it.

Q You don't know anything about it-- you remember when you were arraigned in the Magistrate's Court? A Yes, sir.

Q On the 24th of February, 1903? A Yes, sir.

Q Do you remember being asked-- you were put under oath? A Yes, sir.

Q This question was put to you "What is your name? A Charles Chamberlain"; under oath-- you remember that-- and this question was asked you, "You have heard the testimony that you inserted your penis into the anus of the man Kregal on the night in question; is that so? A No, sir." Was this question asked you and did you make the following response, "And that you made motions in front of this man Kregal-- then the Judge asked you "That is you had sexual intercourse in the anus of this man, and you answered "I did not". Did you make that answer, under oath?

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A I believe so, yes.

Q Then you were asked this question by the Judge "You are absolutely innocent of this charge? A I am absolutely innocent"; that was under oath, was it not? A I don't remember.

Q You were sworn to tell the truth, you took a solemn oath-- you took an oath? A I took an oath.

Q To tell the truth? A Yes, sir.

Q Those are the answers you gave to the question?
A If it is there, yes.

Q Then you were asked this question by the Judge, "Do you recognize the next man (indicating Officer Phelan)?

A No, sir-- then you were asked this question--

MR. ELY: I object.

THE COURT: You cannot go on reading--

MR. SNITKIN: Only a few more, two questions more.

THE COURT: No, I exclude it.

BY MR. SNITKIN:

Q Was this question asked of you?

THE COURT: I exclude the question. You go on and ask him the direct question here.

BY MR. SNITKIN:

Q Do you recognize Officer Phelan?

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Objected to. Objection overruled.

THE COURT: Why do you not call Officer Phelan?

(Officer Phelan rises in the Court room).

THE WITNESS: No, sir, I do not.

BY MR. SWITKIN:

Q You recognize Kregal? A Yes, sir.

Q When did you see him the first time?

THE COURT: Kregal.

MR. SWITKIN: Yes.

THE WITNESS: In the room in the southeast corner of the bath.

BY MR. SWITKIN:

Q You remember this question being asked you in the Magistrate's Court, in contradiction to what you just state?

MR. ELY: I object to the characterization of the question and ask to have it stricken out.

Objection sustained.

THE COURT: Ask him what he said upon the former examination.

BY MR. SWITKIN:

Q Did you state as follows on the former examination, "Yes, I recognize him, Kregal, as being one of those in the station house for the first time": Did you make that answer?

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A Yes, sir.

Q That was under oath? A Yes, sir.

Q Then the next question, that is the last one, and,

I thank your Honor for your indulgence-- "Did you ever see him before you saw him where you say, in the station house?

A No, sir". Did you make that answer? A Yes, sir.

BY MR. ELY:

Q These answers about which you have just been interrogated were all made before you pleaded guilty to this indictment? A Yes, sir.

THE PEOPLE REST.

MR. SNITKIN: I move your Honor to dismiss the case against the defendant and ask your Honor to direct the jury to acquit upon the ground that the People have failed to make out any case as required under Section 303 of the Penal Code under which Section this defendant is charged.

Motion denied.

Exception.

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DEFENDANT'S CASE.

A BRAHAM KREGAL, the defendant, called as a witness in his own behalf, being duly sworn and examined testified as follows:

DIRECT EXAMINATION BY MR. SNITKIN:

Q Your name is what? A Abraham Kregal.

Q What is your business? A Tailor.

Q How long have you been a tailor? A Well, the last 18 years.

Q Married man? A Yes, sir.

Q Where is your place of business? A In 36th street.

Q What number? A 365.

Q How long has it been there? A About two years.

Q Where do you live with your family? A 138 Norfolk street.

Q How long have you lived there? A Since I am married.

Q How long is that? A 12 years.

Q With whom do you live? A With my wife and children.

Q With your wife and children? A Children.

Q How many children have you? A Five.

Objected to.

THE COURT: How old is the youngest child?

THE WITNESS: About 27 months.

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BY MR. SNITKIN:

Q The oldest? A About ten years.

Q Goes to school? A Yes, sir.

BY MR. SNITKIN:

Q That youngest child of yours is the twentieth century baby, what they call? A Yes, sir.

MR. SNITKIN: The world gave him a prize for it.

THE COURT: It cannot be, if it is 27 months old.

BY MR. SNITKIN:

Q That is the youngest-- the oldest ten years-- what are the ages of the others?

Objected to as immaterial. Objection sustained. Exception.

Q You say you have lived in that house for twelve years?

A Twelve years.

Q What floor do you live on? A Top floor.

Q How many rooms have you? A Three.

Q You live there with your five children? A Yes, sir.

Q Do you remember a Saturday evening, February 21st of this year, you remember that night? A Yes, sir.

Q I suppose you will never forget it---

MR. ELY: I object to the remarks of counsel all the time, it is improper.

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MR. SNITKIN: Speak louder, speak so these jurors can hear you-- what time did you close your store that night?

A About ten o'clock, about between nine and ten.

Q Had anyone been in your store to have any work done on that night before you closed up? A Well, there was a man by the name of Mr. Block.

Q Did anyone come in there to have any work done by you? A Yes, sir, there was many more.

Q How did you come to go to this Turkish bath, that is what I want you to tell his Honor and the jury? A On this Saturday evening, about between seven and eight, I guess between seven and eight, there was a man come around, a German man, he said "Tailor, will you do me a job right away". I said "Yes, I will, what is it?" He said, "To repair, to fix up and sew a few buttons on and to press it as quick as you can, because the last train Saturday-night---"

BY MR. SNITKIN:

Q You did that? A Yes, I did.

Q Did he give you anything? A Yes, sir, he gave me a ticket.

Q A ticket? A To go to the bath.

Q When he gave you the coat for the purpose of having it repaired and pressed?

MR. ELY: There is no testimony he gave him

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a coat.

BY MR. SNITKIN:

Q Where did this man get the ticket from? A From a little pocket from the coat.

Q This pocket here (indicating)? A Yes, sir.

Q Then did you take that ticket? A I refused it. I said I had no use to go in the night time.

BY THE COURT:

Q Did you take it finally? A Yes, sir.

BY MR. SNITKIN:

Q After you got the ticket, where did you go? A I went home.

Q What did you do home?

Objected to as immaterial.

THE COURT: It is immaterial-- did he go to the bath that night, that is the test.

BY THE COURT:

Q Did you go to the bath that night? A Yes, sir.

THE COURT: Come right down to that, Mr. Snitkin.

BY MR. SNITKIN:

Q At the time you received this ticket, was Mr. Louis Lightnagel in your store?

Objected to as immaterial. Objection sustained.

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BY MR. SNITKIN:

Q You went to the baths? A Yes, sir.

Q Now, Kregal, on your oath---

THE COURT: He is on his oath.

BY MR. SNITKIN:

Q Remember, I want you to tell these jurors did Chamberlain put his penis in your behind, in your anus? A No, sir, he did not.

Q He did not? A No, sir.

Q Were you ever in that bath in your life before?

A I wasn't never in a bath in my life.

Q You were never in a Turkish bath in your life?

A No, sir.

Q That is, in a Turkish bath?

THE COURT: I do not think it is necessary to differentiate.

BY MR. SNITKIN:

Q Did a man by the name of Rogers whom you saw brought up here, did he take your private parts in his mouth? A He did not.

Q He did not? A No, sir.

Q Did you ever see him that night? A I never saw him in my born life.

Q Did you go into the bath proper; that is, did you go into the hot room or steam room? A No, sir, I was not in

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the bath at all.

Q You were not in the bath? A No, sir---

THE COURT: He was not in the bath?

MR. SNITKIN: The bath room proper, either
in the hot or vapor room.

BY MR. SNITKIN:

Q When you were brought into the Police court, what
name did you give?

Objected to as immaterial.

THE COURT: It is immaterial, unless you wish
to show he gave a false name.

THE WITNESS: I gave my right name.

BY MR. SNITKIN: He gave his right name.

THE COURT: It is immaterial.

BY MR. SNITKIN:

Q Were you ever arrested-- were you ever convicted of any
crime?

Objected to. Objection sustained. Exception.

CROSS EXAMINATION BY MR. ELY:

Q Who was this man who gave you this ticket? A It is
a stranger man, he is a German man.

Q Did you ever see him before? A No, I never saw him
before.

Q Have you ever seen him since? A No.

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Q Then he had never been a customer of yours before the 21st of February, 1903? A No, sir, he was not.

Q You made a charge for the services that you performed in connection with the repair of this coat? A Yes, sir.

Q How much did you charge for that? A I charged him 75 cents.

Q What did he pay you? A He gave me a dollar, I had not change to give the man, the 25 cents and wanted to go out to change the dollar and he said never mind.

Q He gave you a dollar for a 75 cent job, and he gave you this ticket? A Yes, sir.

Q In addition? A Yes, sir.

Q And you never saw him before or since? A No.

Q When you went to this bath place, it was---

BY THE COURT:

Q What time of the day was it that this man gave you this ticket?

BY MR. ELY:

Q What time did this man come in and give you this ticket? A Between 7 and 8.

Q Seven and eight o'clock in the evening? A Yes, sir.

Q When you went to this Turkish bath, what cars did you go by? A I took first the Ninth avenue car and transferred 14th street home to tell my wife I got a ticket.

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Q What cars did you take to go to the Turkish bath place? A After I took me home, Spring street car.

Q Spring street car? A Yes, sir.

Q How did you get up there? A Took a transfer up for Broadway.

Q Went up to Broadway to 55th street? A Yes, sir.

Q And at the Ariston bath place you saw a man by the name of Chamberlain? A Yes, sir.

Q Did you have any conversation with him? A No.

Q Did not have any conversation with Chamberlain at all?

A When I---

Q Yes or no? A When I took this---

BY THE COURT:

Q Did you have any conversation with him, answer the question yes or no-- did you hear the question the District Attorney put to you? A Yes, sir.

Q Did you have any conversation with a man named Chamberlain? A Yes, sir. He came up---

BY MR. ELY:

Q Now, was this conversation that you had with Chamberlain before or after you saw Chamberlain in this southeast room?

A Before. He took a cigarette from me.

Q He took a cigarette from you? A Yes, sir.

Q What conversation was it? A I was standing with my clothes, and my clothes was hanging up, smoking a cigarette---

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Q I asked what the conversation was?

THE COURT: Tell what you said to Chamberlain and what Chamberlain said to you.

A He said to me "Be kind and give me a cigarette and I will treat you to a little whiskey" and he brought over a bottle of whiskey and he treated me with this bottle of whiskey. He brought over the bottle of whiskey and he said "You are so kind you give me a cigarette, and I will treat you with a little whiskey", and when I took the whiskey, I was standing by my clothes smoking there, because the man told me---

Q I only asked for the conversation-- how long was that before you saw Chamberlain in the hot room-- or, not the hot room, the cooling room, the southeast cooling room? A About 15 or 20 minutes, so long as I was through with the cigarette.

Q Is it not a matter of fact that you never did see Chamberlain on that night until you saw him in the cooling room? A No, sir, I saw him when I was standing by the clothes and he came up to me for a cigarette, and I give him a cigarette and he treated me with a little whiskey.

Q When you got into this cooling room, where did you go? A I went up there in the dark room to lay down because I had a headache.

Q I asked you where you went? A I went in the dark room.

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Q This room that you describe as the dark room was just off the parlor, wasn't it? A It was next from the parlor.

Q Why did you go in this cooling room? A To lay down.

Q Where did you go when you got into the cooling room, where did you go? A I went straight in there in the dark room to lay down.

Q I ask you about the cooling room next the parlor?

A This dark room is next the parlor.

THE COURT: That is the cooling room, the dark room.

BY MR. ELY:

Q Did you see Chamberlain there? A Yes, sir, he was there, he was standing there.

Q He was standing there? A He was standing by the wall.

Q Then what happened? A I was-- I passed Chamberlain and some people was standing there, and there was couches to lay down, and I was looking for a place to find a place to lay down, and there was no place, there was all the couches taken, and when I went back to go to look for another place to lay down, Chamberlain put his hand on my shoulder, one hand, and with the other hand he punched me in the side. I was thinking---

Q Do not say what you were thinking.

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THE COURT: What took place.

A He punched me with the other hand in the side.

Q Well, go on. A I said "To hell with the place, I better go home and dress myself, I will be better off."

BY MR. ELY:

Q When did you say that? A When he punched me in the side, Chamberlain.

Q Why did you say that? A He didn't say anything at all.

Q I say, why did you say that?

Objected to. Objection overruled. Exception.

A Because I was tired and I was looking for a place and couldn't find any, and he punched me and I said, "Well, to hell, better I am going home."

BY MR. ELY:

Q What did you do then, go on, after you said to hell with the place, what did you do? A I went up to the place for my clothes to dress myself.

Q Now, did Chamberlain lift the sheet which you had on?

A No, I had on the sheet.

Q Did he lift it? A No.

Q Did you ever state under oath in response to this question "You have just told this jury that Chamberlain lifted up the sheet? A Yes, sir". A Well, I don't remember exactly.

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BY MR. ELY:

Q When he put-- when Chamberlain put his hand upon your arm, what did you think he wanted to do?

Objected to. Objection overruled. Exception.

THE COURT: It is cross examination.

THE WITNESS: I thought may be he thought the place was very small to pass back again, that was the reason he put his hand upon me.

BY MR. ELY:

Q Did you ever say under oath that because he did that, put his hand upon your arm, that you believed he wanted to have connection with you? A Yes, sir.

Q Did you ever make answer "Yes" to this question, "And that because he did that you believed he wanted to have connection with you"? A He was not connected with me.

MR. ELY: I did not ask that and I ask to have the answer stricken out.

THE COURT: Strike it out.

THE COURT: Read the question again.

Question repeated.

BY THE COURT:

Q Did you answer that question that way? A I believe I did.

BY MR. ELY:

Q Is the only reason that you thought that Chamberlain

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wanted to have connection with you the fact that he put his hand upon you? A Yes.

Q You remember now whether or not he lifted the sheet?

A Yes, he did.

Q He did lift the sheet, that you had on? A No, he did not.

Q Don't you recollect that you said under oath, in response to this question, "You have told this jury that Chamberlain lifted up the sheet? A Yes."

BY THE COURT:

Q Did you make answer to that question? A Yes, sir.

BY MR. ELY:

Q Then, it is a fact that Chamberlain did lift the sheet you had on your body? A Yes, he did.

Q In this cooling room? A Yes, sir.

Q And it is a fact that he put his hand upon you?

A Well, I believe he did.

Q Don't you know? A Yes, I know.

Q Then what happened after he lifted the sheet and put his hand upon you? A Then I wouldn't stay and I went up for the clothes to dress myself, and that is the reason I said "To hell with the place I wouldn't be here in this place at all."

Q Why did you say that? A Because he put his hand upon me and I was thinking-- I was standing there and didn't know

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myself what to think about it.

Q Did you believe because he put his hand upon you that he was going to have connection with you?

MR. SNITKIN: I object to what he believed.

THE COURT: Ask him what he thought at the time.

MR. ELY: That is what I ask.

BY MR. ELY:

Q Did you think that because Chamberlain put his hand upon you that he was going to have connection with you or try to have connection with you? A Well---

Q Did you? A I can't tell exactly because he did it not to me.

Q I know, I don't ask you that.

MR. ELY: I ask to have the answer stricken out and the question repeated.

THE COURT: I will let the answer stand.

BY MR. ELY:

Q You recollect stating under oath before "And that because he did that you believed he wanted to have connection with you?"

THE COURT: He has already answered that.

BY MR. ELY:

Q Why do you answer differently now?

Objected to. Objection sustained.

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BY MR. ELY:

Q How long after this occurrence in this cooling room between you and Chamberlain, as you have described it, were you placed under arrest? A I was arrested in 55th street.

Q Did you ever see Hibbard before the 21st day of February, 1903? A I did not. It was crowded. I can't tell. May be he was there.

THE COURT: The District Attorney asked you did you see him before that day?

THE WITNESS: Before this day, no, I did not.

BY MR. ELY:

Q Didn't you see and have a conversation with that man Hibbard on the 14th day of February, 1903, in the Ariston baths at the northeast corner of 55th street and Broadway?

Objected to. Objection overruled. Exception.

BY THE COURT:

Q Did you hear the question? A I did not see that man. It was crowded.

BY THE COURT:

Q On the 14th day of February, did you see him in the Ariston baths? A No, I did not.

BY MR. ELY:

Q Did you see that man (McGutocheon) at the northeast corner of 55th street and Broadway on the 14th day of February,

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1903 at the Ariston baths? A No, sir, I did not.

BY THE COURT: Ask him was he ever in the Ariston baths before this night.

BY MR. ELY:

Q Were you ever in your life in the Ariston baths before the night of the 21st day of February, 1903, the Ariston baths being the baths at the northeast corner of 55th street and Broadway in the City and County of New York, where you were arrested?

BY THE COURT:

Q Were you ever in those baths before that night, that you were arrested? A No, ~~no~~, I never was in that bath at all.

THE COURT: He has testified that he was never in a Turkish bath before in his life.

THE TENTH JUROR: I want to know what time he got to the bath.

BY THE COURT:

Q The juror wants to know what time you arrived at the bath; that is, reached the bath that night? A This night about, I guess, about half past eleven or about twelve o'clock.

Q Half past eleven or twelve o'clock? A Yes, sir.

BY THE TENTH JUROR:

Q Did you take a bath? A No, I did not.

Q Why did you remain there that length of time?

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Q Did you undress? A I was part dressed.

Q You took off your clothes? A Yes, sir.

Q Did you put a sheet around you? A Yes, sir.

Q Did you walk around the rooms? A No, sir.

Q Did you stay in one room? A I was sitting by my clothes, where the clothes was hanging up.

Q Did you go into the water? A No, I couldn't go because I had a headache and I had in mind I will stay.

Q If you had a headache so that you could not go in the water, why did you go to the bath at all that night?

A When I went in there I feel I got a headache and I couldn't stay.

Q You got a headache after you went in? A Yes, sir, and I couldn't go in there.

Q The juror wishes to know why did you remain so long when you found you had a headache and couldn't take a bath, why did you remain so long in the bath? A I had in my mind maybe it goes away, because I am there the first time and it takes me in the head quick and I think maybe I lay down and be a little better and then I will go in the bath.

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ELIAS LIGHTNAGEL, called as a witness in
behalf of the defendant, being duly sworn.

The court admonishes the jury in accordance
with Section 415 of the Code of Criminal Procedure,
and takes an adjournment until tomorrow morning
April 9, 1903, at 10:30.

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April 9, 1903.

TRIAL RESUMED.

ELIAS LIGHTNAGEL, having been previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. SNITKIN:

Q Where do you live? A 97 Orchard.

Q Do you know the defendant at the bar, Kregal?

A Yes, sir.

Q Are you in any way related to him? A I am a step-father to his wife.

Q Do you remember the Saturday of the 21st of February of this year? A I think it was Saturday.

MR. SNITKIN: He did not say I think.

MR. REY: I object.

BY MR. SNITKIN:

Q Were you in the store conducted by Mr. Kregal between the hours of 7 and 8 o'clock upon that day?

Objected to as leading.

THE COURT: For what purpose is this witness called -- to show that the defendant got the ticket from this person?

MR. SNITKIN: Yes.

THE COURT: Do you see any objection, Mr. Rey, in conceding that this witness will testify to that?

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MR. RLY: No.

THE COURT: Then, the District Attorney concedes that this witness will testify to the defendant getting the ticket.

MR. SNITKIN: That is all then.

CROSS EXAMINATION BY MR. RLY:

Q Where were you when this man gave the ticket, as you say, to the defendant? A I was in the store.

Q When did the man give this ticket to the defendant?

A It was something about between 7 and 8 o'clock.

Q What did this man who gave the ticket to the defendant have done in this shop? A The man came in and said to him "Tailor, would you press my coat". Then he said that he would like to fix two button holes, and the boss himself fixed the button holes while I was sitting before a long table that was there.

Q When did this man as you say give the defendant the ticket?

Objected to; overruled and exception.

A After he had fixed the button holes and he prepared to press the coat, in taking the coat, he said "Have you something in your pocket, because I need to have them clear for the purpose of pressing it well", and thereupon the customer searched his own pocket of that coat and from a pocket on the

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right side he produced a ticket.

Q Was that before or after the coat had been pressed?

A He took the ticket out when the coat was to be pressed.

Q Did you testify at any time that this man with the overcoat walked to the door and when he came to the door he turned around and he took a ticket and he said to the defendant, "Do you like a good sweat, I have here a ticket, I give you this ticket, I have to go away, all the expenses are paid, I have to leave with the train"? A Yes, I said that.

D O R A K R E G A L , called as a witness in behalf of the defendant.

THE COURT: What do you wish to show by this witness?

MR. SNITKIN: Simply as to the hour this man came home and the hour that he left.

MR. ELY: That is immaterial and I object to it.

THE COURT: This witness speaks the Yiddish dialect--

MR. SNITKIN: I will act upon your suggestion and withdraw the witness.

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PIERRE A. SIEGELSTEIN, called as a witness
in behalf of the Defendant, being duly sworn and examined
testified as follows:

DIRECT EXAMINATION BY MR. SHITKIN:

Q You are a physician and surgeon, are you? A Yes, sir.

Q Practicing in this city? A Yes, sir.

Q How long have you been such physician and surgeon?

A Now practicing in the City of New York 13 years.

Q Where did you study? A I studied abroad before I
came to New York and graduated from the University Medical
College of the City of New York.

BY THE COURT:

Q Where did you study abroad? A Paris.

BY MR. SHITKIN:

Q Were you or are you now connected with any Medical
institution, or were you physician to any of the City Depart-
ments at any time? A Yes, I was connected with Bellevue Hos-
pital, the German Hospital, and physician to the City pris-
on.

Q Of the City of New York? A City of New York.

Q Do you know the meaning of the term sodomy? A Do I
know?

THE COURT: I exclude the question.

BY MR. SHITKIN:

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Q What is pederasty?

Objected to. Objection sustained. Exception.

Q Will you be good enough to describe to the Court and jury the anus and its anatomical relations? A The anus is the terminal part of the rectum which extends from the---

THE COURT: What part did you say?

THE WITNESS: The terminal part of the rectum which extends from the sigmoid flexure of the large intestine to the anus which is its opening.

THE COURT: Give us something in English that the jurors can understand.

THE WITNESS: This is English, as far as the terms are concerned. The anus is called the opening of the rectum. The rectum is the last part of the large intestine, and extends from the sigmoid flexure to the anus, to the opening.

BY THE COURT:

Q From what? A The sigmoid flexure.

Q What distance? A About six inches to the anus, varying from six to eight inches down to the anus. The anus is contracted by muscles known as the sphincter muscles, the external and internal muscles. Then we have muscles known as the levator ani muscles, muscles that elevate the anus inward, and two other muscles of less importance known as the coccygeal muscles.

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Q What is that? A Small muscular attachments from the anus to the rectum and the bony portion.

BY MR. SNITKIN:

Q What is the position of the penis when it is erect?

A Upwards and backwards.

Q It has been testified to here that an act of sodomy, or rather pederasty---

MR. ELY: I object to the term pederasty.

THE COURT: I do not understand it.

MR. SNITKIN: pederasty is one form of sodomy--- sodomy is a general term.

THE COURT: Mr. Snitkin, ~~we~~ we are dealing with twelve judges of the facts here, who are not supposed to be trained and educated in these technical terms, so we must use the vernacular.

BY MR. SNITKIN:

Q It has been testified to here in this Court before this jury that two men in an erect position committed an act of sexual intercourse through the anus; now I ask you from the relation of the anus, from the position and direction of the penis when it is erect, could such an act be perpetrated in a standing position? A Absolutely a physical impossibility.

Q Explain to his Honor and to this jury in as plain

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language as you can why you say it is impossible-- what you base your opinion on?

THE COURT: strike out the answer and the question also, and I instruct the gentlemen of the jury to disregard that question and answer.

MR. SNITKIN: Which one?

THE COURT: The question you have asked and the answer that has been given to it.

BY THE COURT:

Q Were you present in these baths at the time this transaction took place? A No, sir.

Q You know nothing of your own knowledge personally about it? A About the place?

Q About the place and the alleged transaction? A No, sir.

Q You have no personal knowledge? A Absolutely none.

THE COURT: This witness says he has no personal knowledge.

MR. SNITKIN: Of course he has not, but he is an expert.

THE COURT: You will have to lay the foundation; you must qualify him as an expert-- all the expert can do is to give an opinion.

MR. SNITKIN: That is all I ask for, an opinion.

THE COURT: You are asking him for something

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else. He does not know anything at all about the facts in the case.

BY MR. SNITKIN:

Q How often have you testified in criminal cases?

A A number of cases.

Q You have testified before in sodomy cases? A I did so.

THE COURT: In what capacity?

THE WITNESS: As an expert.

BY MR. SNITKIN:

Q As an expert, I mean? A As an expert.

Q In the Court of General Sessions? A Yes, sir.

Q And in other criminal cases as an expert? A Yes, sir.

BY THE COURT:

Q How many times did you testify in cases of sodomy as an expert? A This is the third time now.

Q Within what period of time? A Within a year or so.

BY MR. SNITKIN:

Q Did you ever testify in civil cases as an expert on diseases of the mind or brain?

Objected to. Objection sustained.

THE COURT: That is not in issue here.

MR. SNITKIN: It has been testified to here---

THE COURT: You do not claim that there is anything the matter with this defendant's mind?

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MR. SNITKIN: I am qualifying the gentleman to show the character of a doctor he is. He is not an ordinary physician that simply goes and makes a visit and comes home again.

THE COURT: It is a question for the jury to determine, whether the testimony of an alienist is worth anything on the question of sodomy.

BY MR. SNITKIN:

Q Now, it has been testified to here that an act of sodomy was committed between two men?

THE COURT: I exclude the question so far.

MR. SNITKIN: I ask his opinion.

THE COURT: I exclude the question from your own introduction.

BY MR. SNITKIN:

Q In your own opinion is it physically possible to commit the act of sodomy between two men in an erect position?

Objected to upon the ground that the witness has not been sufficiently qualified as an expert on sodomy, having only testified three times in a period of about two years or a year.

THE COURT: The value of that testimony will have to go to the jury. There is a fatal defect

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in your question, Mr. Snitkin.

MR. SNITKIN: I will reframe it.

BY MR. SNITKIN:

Q Assuming that two men were standing in an erect position, one behind the other, the active party, that is the person committing the act, has his penis in an erect position, the passive party is against the body of the active party; in that standing position, in your opinion, can an act of sodomy be perpetrated between those two men, or committed?

MR. ELY: I object to the form of the question upon the ground that the witness has not been sufficiently qualified to testify.

THE COURT: There is a further feature in the question that it assumes a conclusion, I sustain the objection.

Exception.

BY MR. SNITKIN:

Q Assuming now that what has been testified to is true,

THE COURT: The act of sodomy is a legal conclusion.

BY MR. SNITKIN:

Q Now, doctor, assuming that two men stand in an erect position, one behind the other, can the penis penetrate the anus of that other person, that is, can the penis of the person standing behind penetrate the anus of the person stand-

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ing in front of him?

Objected to. Objection sustained. Exception.

Q If the penis is inserted into the anus, does that cause pain or suffering?

Objected to as immaterial.

THE COURT: There is no foundation laid for that question.

MR. SNITKIN: It has been testified to here.

THE COURT: I exclude the question upon its introduction. It is improper to say what has been testified to. You must put your question in a proper hypothetical form to this witness and ask him for his opinion based upon the hypothesis.

BY MR. SNITKIN:

Q Assuming that two men stand in an erect position, one behind the other, the rear person having his penis erect, in your opinion, from the anatomical relation of the anus, is it physically possible to penetrate or perforate the anus with the penis?

Objected to. Objection sustained. Exception.

THE COURT: There is no evidence here that there was a perforation.

BY MR. SNITKIN:

Q Assuming that two men stand in an erect position, or,

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standing in an erect position, one behind the other, the rear person having his penis in a state of erection, is it physically possible to penetrate the anus in your opinion?

Objected to.

THE COURT: The question is defective. Allow me to suggest a question. Ask him this question: "Assuming that two men are naked, and that they stand in the position described by the witnesses as a standing or erect position; that their bodies are close to each other; that the penis of one is in a state of erection; that it disappears from sight between the buttocks of the man who stands in front; is it in your opinion physically possible for the penis of the one to penetrate the anus of the other?"

MR. SNITKIN: That is perfectly satisfactory, and I thank your Honor for the question.

THE COURT: I suggest it to you to save time.

THE WITNESS: It is absolutely--

THE COURT: strike out the word "absolutely".

Put the question, Mr. Snitkin.

BY MR. SNITKIN:

Q Now, doctor, assuming that two men standing in an erect position, who are naked---

THE COURT: If you adopt my question, let the

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stenographer read it as your question.

MR. SNITKIN: Yes, exactly.

(The stenographer reads the former question as framed by the Court).

THE WITNESS: It is physically impossible.

THE COURT: That is your opinion?

THE WITNESS: That is my opinion based upon facts.

BY MR. SNITKIN:

Q Why in your opinion is it physically impossible to commit an act of that kind? A My opinion is based upon the following facts: First, the anatomical relation of the anus; the anus is always closed by contracting muscles known as the sphincter muscles; the position of the anus at all times is downwards and inwards towards the pubis.

Q What is the pubis? A The frontal part-- while, the penis when erect is directed upward and backward. The anus is always obstructed by the heavy folds of the buttocks which must be well separated before you can gain introduction into the anus, to stretch the contracting muscles. Then again it is a physiological and undeniable fact--

MR. ELY: I object to that.

THE WITNESS: It is a physiological fact that whenever the anus is touched or irritated with any foreign

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body, be it a finger, be it a penis, be it any instrument,
the levator ani muscles--

BY MR. SNITKIN:

Q what does that mean? A The two muscles I have previously described, muscles of the anus--- draw involuntarily the anus inward, and offer great resistance. This is the experience of anyone who ever tried to introduce the nozzle of a syringe into the anus, that whenever he tried to introduce it, the anus is involuntarily drawn inward by this, and he must slowly and gradually stretch the muscles in order to introduce it. All of these facts convince me that it would be impossible for the elephant to pass through the ear of a needle---

THE COURT: Stop.

BY MR. SNITKIN:

Q In your opinion, what would the passive party, that is the person voluntarily submitting to it-- what would the passive party have to do in order to allow the active party, that is, the person committing the act, to insert his penis?

Objected to. Objection sustained. Exception.

Q Assuming two men in a naked position, or rather two men standing in an erect position, could possibly commit an act of that kind, would the commission of that act of sodomy

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cause pain to the passive party?

Objected to. Sustained. Exception.

MR. SNITKIN: It has been testified to here---

I asked the officer-- that when this act was committed between Kregal and Chamberlain-- I asked the officer did Kregal show any signs of pain or suffering and he said no.

THE COURT: How could the officer tell? Is it not possible for a man to suffer internal pain without manifesting signs-- how do we know whether this man suffered pain or not?

MR. SNITKIN: Because the doctor says that even to insert the finger in the anus causes pain, and the finger you can manipulate any way you like.

THE COURT: I exclude the question.

BY MR. SNITKIN:

Q Could the same motion be gone through for the purpose of producing ejaculation by two persons naked and in an erect position, by placing the penis between the buttocks? A Why, certainly.

Q That would not be in the anus? A No, absolutely not.

Q Assuming that two men undressed, in an erect position, commit an act of sodomy, a person standing a foot and a half

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away from where the act is being committed, is it possible, because of the anatomical relation of the anus and the folds here to see the penis penetrate the anus? A Cannot even be imagined by any sound mind that it is possible.

Q Why not? A Because the folds of the buttocks alone obstruct the possibility of seeing the penis inserted into the anus.

He cross examination.

JACOB J. OESTREICHER, called as a witness in behalf of the defendant, being duly sworn and examined testified as follows:

DIRECT EXAMINATION BY MR. SNITKIN:

Q What is your business? A Tailor.

Q Where is your place of business? A 467 and 69 Sixth avenue, corner of 28th street.

Q How long have you been in business? A 25 years.

Q Do you know the defendant Abraham Kregal? A I do.

Q How long have you known him? A Ten or twelve years.

Q Do you know other people who know him? A Yes, sir.

Q Do you know what his general reputation is for decency morality and respectability? A With me it has been good.

Q For morality and decency-- you said good? A Good.

MR. ELY: He said "With me it has been good."

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BY MR. SNITKIN:

Q Have you ever heard anything derogatory--

Objected to.

Question excluded.

Q You say you know other people who know him? A Yes,
sir.

CROSS EXAMINATION BY MR. ELY:

Q You employed the defendant? A I did.

Q And you only knew him as an employee? A I did.

Q You have no social relations with him at all?

A No.

Q You never knew him personally at all? but merely as an
employee? A Well, he used to be in my place every day.

Q Did you ever know him personally other than as an
employee? A No, sir.

Q You never heard his reputation discussed by anybody?

A No.

BY MR. SNITKIN:

Q You never heard anything derogatory to him---

Objected to.

Objection sustained.

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P I N C U S K E S S L E R, called as a witness in behalf
of the defendant, being duly sworn and examined, testified
as follows:

DIRECT EXAMINATION BY MR. SNITKIN:

Q Where do you live? A Brooklyn, 33 Humboldt street.

Q What is your business? A Tailor, retired.

Q You own real estate in Brooklyn? A Yes, sir.

Q Do you know the defendant Kregal? A Yes, sir.

BY THE COURT:

Q Do you know him personally? A Yes, sir.

BY MR. SNITKIN:

Q How long have you known him? A I have known him about
12 or 13 years.

Q Did you ever visit him? A Yes, sir.

Q Did he ever visit your family? A Yes, sir.

Q Do you know other people that know him? A Yes, sir.

Q Do you know what his general reputation is for decency
and morality? A Yes, sir.

Q Is it good or bad? A Good, very good.

CROSS EXAMINATION BY MR. ELY:

Q Did you ever hear his reputation discussed by anybody
prior to the 21st day of February, 1903, for decency and mor-
ality? A I heard that the last time----

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SAMUEL WERNER, called as a witness in behalf of the defendant, being duly sworn, and examined, testified as follows;

DIRECT EXAMINATION BY MR. SNITKIN:

Q What is your business? A I am in the produce and commission business.

Q Place of business? A West Washington Market.

Q How long have you been in business? A 19 years.

Q Do you know the defendant Kregal? A Yes, sir.

Q How long have you known him? A About 11 years-- possibly 12.

Q Do you know other people who know him? A Yes, sir.

Q Do you know where he lives? A Yes, sir.

Q Where? A He lived in one of my houses.

Q For the last twelve years? A 11 or 12 years.

Q Do you know what his general reputation is for decency and morality?

THE COURT: Answer yes or no.

THE WITNESS: Well, as far as I know---

THE COURT: No, do you know his general reputation?

BY MR. SNITKIN:

Q For decency and morality? A Yes, sir.

Q Is it good or bad? A Good.

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CROSS EXAMINATION BY MR. ELY:

Q You have simply known him as a tenant in one of your houses, is that all? A Well, yes.

Q Have you ever gone out nights with him? A No, sir.

Q Ever gone around with him at all? A No, sir.

Q Have you ever heard his reputation for decency and morality discussed? A Only among the tenants.

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

DIRECT EXAMINATION BY MR. SNITKIN:

Q Where do you live? A 165 Ninth avenue.

Q What is your business? A Tailor.

Q How long have you been in business? A About eight years.

Q Do you know the defendant Kregal? A Yes, sir.

Q How long have you known him? A Fourteen years about.

Q Did you ever visit his family? A Yes, sir.

Q Did his family ever visit you?

Objected to.

THE COURT: It is immaterial.

BY MR. SNITKIN:

Q Have you ever been out nights with him? A Yes, sir.

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THE COURT: It is immaterial.

BY MR. SNITKIN:

Q Do you know other people who know him? A Yes, sir,
I know about 50.

Q Do you know what his general reputation is for decency
and morality? A Yes, sir.

Q Is it good or bad? A Good.

No cross examination.

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

DIRECT EXAMINATION BY MR. SNITKIN:

Q Where do you live? A 179 Norfolk street.

Q Is that in the immediate vicinity where Mr. Kregal
lives? A Yes, sir.

Q What is your business? A Jewelry.

Q You are a jeweler? A Yes, sir, jeweler.

Q How long have you been in business? A 12 or 13 years.

Q Do you know the defendant Kregal? A Yes, sir.

Q How long have you known him? A 14 years.

Q Do you know his family? A Yes, sir.

Q Have you ever visited him where he lives? A I did not
visit him.

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Q Do you know other people who know him? A Yes, sir.

Q Do you know what his general reputation is for decency and morality? A Yes, sir.

Q Is it good or bad? A Good.

CROSS EXAMINATION BY MR. ELY:

Q You never heard anybody discuss whether he was a moral man or an immoral man, did you? A No.

BY MR. SNITKIN:

Q Did you ever hear anybody say anything against him?

THE COURT: He said no.

DEFENDANT RESTS.

REBUTTAL.

WILLIAM TRAVERS GIBB, called as a witness in behalf of the People, in rebuttal, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q You are a physician and surgeon duly admitted and licensed to practice under the laws of the State of New York?

A Yes, sir.

Q And for how long have you been? A 17 years.

Q With what, if any, public institutions are you connected? A I am one of the visiting surgeons of the workhouse, Penitentiary, and almshouses in this city; I am examining physician for the Society for the Prevention of Cruelty to Children

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and instructor in diseases of women in the Cornell Medical College.

Q Assuming two men are standing close together in an erect position, unclothed, that is, naked, and that the penis of the man standing behind one of them being in a state of erection, and assuming that the penis of the man standing behind disappears between the buttocks of the man in front, is it in your opinion physically possible for the penis of the man behind to penetrate the anus of the man in front?

A Yes, sir.

Q I show you this paper and I ask you what that is?

A A diagrammatic representation of the lower part of the human body from near the waist line to the middle of the thigh, cut in the middle.

Q Is it a male or female?

A Male.

Q Does that show the anus and rectum?

A Yes, sir.

Q From your knowledge of the anatomy of the human animal, is that a correct representation?

A Yes, sir, it is diagrammatically correct.

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offered in evidence and marked People's Exhibit B.

Q Explain your last answer to the effect that this intercourse on the question that has been propounded to you, is possible?

Objected to.

THE COURT: The form of the question is objectionable. I sustain the objection.

BY MR. ELY:

Q State, from the physical construction of the human body, and the course of rectum, how it is possible for a person standing in an erect position, naked, with the penis erect, to have connection through the anus of a person also naked, standing in an erect position and in front of such person?

Objected to. Objection sustained.

BY MR. ELY:

Q Assuming them that these two people are standing naked together, one in front of the other, and that the penis of the person behind is in an erect position. Explain how such person standing behind can have in your professional opinion intercourse with the person standing in front, by penetrating the anus of such person?

MR. SMITKIN: I object to the form of the question.

Objection overruled. Exception.

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MR. SNITKIN: I also object upon the ground that it is leading.

Objection overruled. Exception.

MR. SNITKIN: I also object upon the further ground that it is assuming a state of facts not in evidence.

Objection overruled. Exception.

THE WITNESS: The lower segment or lower part of the rectum, points downward and backward, as the person stands erect, that is, that part of the rectum from there to there (indicating) points downward and backward, and the penis in erect posture points upward and forward, at an angle of about 15 to 20 degrees ordinarily above the level, and the opening of the anus points downward and backward, and the erect penis pointing upward and forward, the opening of the anus is in direct right angles to the penis in the erect posture, and the act of intercourse in that posture is perfectly feasible.

Q What kind of muscles are those around the anus?

A They are partially involuntary muscles; they are muscles that dilate very readily and contract very readily; they can be dilated to a very large extent.

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Q They are soft? A Soft, yes.

CROSS EXAMINATION BY MR. SNITKIN:

Q You have invariably testified for the prosecution in rape and sodomy cases?

Objected to. Objection overruled.

A Yes.

Q You said that the anus is situated anatomically downward and inward? A No, sir, I did not.

Q Downward and forward? A No, sir.

Q Which is it? A Downward and backward.

Q Is it not a fact it is ~~directed~~ inward?

A No, sir.

Q Let me have that diagram -- is not the anus towards the pubis? A Your question does not mean anything.

Q It does not? A No, sir-- the anus is not towards the pubis any more than anything else.

Q Is it towards the pubis or the sacrum? A It is nearer the coccyx, not the sacrum -- the coccyx is the end of the sacrum. It is nearer the coccyx than it is the pubis.

Q Is it not directed more towards the pubis than the coccyx? A No, sir.

Q The penis when erected is upward? A Upward and forward.

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Q And the anus is downward? A Downward and backward.

Q The anus is downward? A No, sir, not entirely downward.

Q It is downward? A It is, downward and backward.

Q Is it not this way (indicating)? A It is downward and backward -- hold the diagram straight.

Q The muscles are right here (indicating)?

A Yes, sir.

Q If the penis is upward and outward? A Upward and forward.

Q Upward and forward? A Yes, sir.

Q If the penis is upward? A And forward.

Q If the penis is upward and the anus downward, how is it physically possible in your opinion to commit an act of sodomy in an erect position? A Your statement is not correct.

Q It is not correct? A No, sir.

Q Answer my question, if it is not correct?

A I cannot answer your question. It is not correct.

Q Did you not say on the direct examination of Mr. Ely, when the penis is in a state of erection, it is directed upward? A No, sir, I said upward and forward.

Q It is upward, is it not? A No, sir, upward and forward, there is a difference between that and that.

Q Assuming this is the penis, and it is in a state of

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erection, it is that way (indicating)? A That is upward and forward, yes -- vertical is upward.

Q Just that way? A Yes, sir.

Q The anus is downward? A And backward.

Q All right, backward? A I cannot see--

Q Assuming this is the penis right here? A You are behind the book and I do not see you.

Q The penis is in this position when it is erect (indicating)? A Yes, sir.

Q This is outward, upward and outward? A Upward and forward.

Q The anus is downward? A And backward.

Q If a person in an erect position stands -- come over here, Doctor (referring to Dr. Siegelstein) and let me illustrate.

THE COURT: I will not have it.

BY MR. SNITKIN:

Q Is it not necessary, in order that the penis, in this position -- A Turn around so I can see.

Q I will show it to you, just that way, in order that it should enter the anus, would it not be necessary for the man to bend down? A He could not do it if he bent down.

Q He could not? A Certainly, he could do it if he bent down.

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Q Would the active party have to bend down? A Not necessarily.

Q Would he have to? A No, sir.

Q Would he have to raise himself up? A It would depend entirely upon --

Q Would he have to raise himself up? A Depend upon the height of the man upon whom he was trying to get into.

Q Depend upon the height of the man? A Yes, sir.

Q When the man is standing in an erect position, is it not a fact that the anus is completely closed by the sphincter muscle? A It is always closed by the sphincter muscle, but it can be dilated.

Q I did not ask you that, why do you volunteer information?

MR. ELY: I object to that.

BY MR. SNITKIN:

Q It is always completely closed by the sphincter muscles of the anus? A The sphincter muscles guard the anus.

Q It is completely obstructed by the folds of the buttocks? A No, sir.

Q Do not the two folds obstruct? A They come together.

Q Do they not obstruct? A That is not an obstruction.

Q It is not? A No, sir.

Q That is your opinion? A My opinion.

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Q Can you see the anus without separating the buttocks?

A No, sir, unless the man is thin, moderately thin; if he is fat you cannot see it.

Q That is, you cannot see the anus of that person?

A You cannot see the anal opening, if he is fat; if he is thin you can very plainly. Depends upon the amount of fat in the gluteal muscles.

Q Tell this jury -- they are laymen -- can you really see the anus of a person without separating the buttocks?

Objected to. Objection overruled.

A Yes, in a moderately thin subject.

Q Without separating the buttocks? A With a moderately thin subject, in a very thin subject you can see it very plainly.

Q You did not say that at the last trial? A I was not asked it.

Q Is it not a fact, an undeniable fact, that in order to introduce the penis into the anus, you must first separate the folds of the buttocks and then dilate the sphincter muscles of the anus before you can do so, yes or no, it is not argumentative? A It is argumentative-- I cannot answer it yes or no. It would depend entirely upon the size of the buttocks and stoutness of the subject, and then upon what you mean by dilating.

Q You know what dilating means? A Yes, sir -- do you

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mean dilated with the finger or with the penis?

THE COURT: The Doctor says he cannot understand it, Mr. Snitkin.

BY MR. SNITKIN:

Q I will repeat it; is it not an undeniable fact that in order to introduce the penis into the anus or any instrument, you must first separate the folds of the buttocks and then dilate the sphincter muscles before you can do so?

THE COURT: The question is, is it not an undeniable fact.

A The anus has to be dilated of course, by the object you are putting into it.

BY MR. SNITKIN:

Q Is it not a fact that in order to be able to separate the folds of the buttocks and dilate the sphincter muscles of the anus it is necessary to either place the person in the knee chest position or Sims position? A No, sir.

Q You have heard of Professor Kelsey?

Objected to. Objection overruled.

A Yes, sir.

Q He is instructor of surgery at the New York Post Graduate Medical School and Hospital and member of the New York Academy of Medicine -- is not that the position (indicating a cut in a book)?

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MR. ELY: I object to his showing this to the jury.

Objection sustained.

MR. SNITKIN: I will show it to the Doctor.

THE WITNESS: That is one of the positions, yes.

Q Yes. A One of the positions.

MR. ELY: I object to this as immaterial and ask to have it stricken out. This is a position for a medical examination.

THE COURT: The Doctor can explain.

MR. ELY: (Continuing) And not for the purposes of sodomy.

BY MR. SNITKIN:

Q Kelsey is recognized as an authority? A I don't know whether he is recognized as an authority or not -- what edition is that book?

Q This is 1897? A He has amended that book since then -- that is an old book.

Q You mean to say he has amended this? A I don't know what he has done about it, but that is an old edition.

Q He may have supplemented something -- can you show me one text book, one single text book, give me the name of one author and show it to this jury, that will say that you can

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dilate the muscles -- that is you can introduce an instrument in the anus or any foreign substance or body into the anus without first putting that man in the knee chest or Sims' position? A Common sense would tell you that you can do it-- don't need a book for that.

Q. That is not what I ask you; I ask you can you tell this jury one author or one recognized medical authority that says that you can introduce a foreign substance or a foreign body into the anus without first putting that person into the knee-chest or Sims' position?

MR. ELY: I object, unless he shows for what purpose the person is to be put in the so called knee-chest position.

THE WITNESS: I consider myself an authority and I say it can be done.

BY MR. SNITKIN:

Q You consider yourself an authority? A Yes, sir.

Q Did you ever write a book? A No, sir, it is not necessary.

Q You consider yourself an authority, in your opinion?

A In my own opinion, yes.

Q Do you know of anybody that ever quoted you? A I was not there and I could not say.

Q Is it not a fact that the slightest touch to the anus

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with any foreign body causes the levator ani muscles to involuntarily draw the anus inward and resist even the introduction of the nozzle of a syringe? A No, sir.

Q No. A No.

Q Do you know what the urethra is? A Yes, sir.

Q That is the canal --

THE COURT: He says he knows what it is.

THE WITNESS: It is the canal you urinate through, leads from the bladder to the --

BY MR. SNITKIN:

Q Is it not more difficult to pass a rubber bougie into the urethra than it is to introduce it into the anus?

A Yes, sir.

Q Just think of it -- it is more difficult to introduce--

MR. ELY: I object. He has already stated.

THE COURT: Objection sustained.

BY MR. ELY:

Q Have you ever examined a man personally standing up in an upright position, as to his anus? A Oh, yes.

Q How have you examined him in that way, with the finger? A With the finger.

Q And as matter of fact these various positions that counsel has been referring to are used for what purpose?

A For the purpose of facilitating examinations and rendering

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the examination easier and so that the operator can see what he is doing.

Q In cases where foreign substances have been introduced into the anus, frequently, in what condition are the muscles of the anus, if you can tell?

THE COURT: Do you understand that question?

THE WITNESS: Yes.

MR. SNITKIN: I do not understand it.

THE WITNESS: Frequent dilatation of the anus causes the muscles to become more flapped and more easily dilatable.

BY MR. RIX:

Q In your experience have you ever known of cases in which the anus was in a constant state of dilatation, in other words, not closed at all? A Yes, sir.

Q In what class of cases?

Objected to. Overruled.

A Semewite.

Q Have you had experience in treating people addicted to sodomy, in your professional career, to a certain extent?

Objected to. Objection overruled. Exception.

A I have seen a number and treated them.

Q Your experience covers a period of how long in this class of cases? A About 12 years.

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RE)CROSS EXAMINATION BY MR. SNITKIN:

Q Invariably for the prosecution? A That is as to examinations, I have just answered.

Q As a witness?

THE COURT: He did not answer as a witness.

Q If the anus is continually dilated, what becomes of the faeces? A There is a muscle in the interior called the internal sphincter; that will guard the faeces in a case of that kind, situated about an inch or an inch and a quarter above the external sphincter.

Q If the anus is dilated, as you say, all the time, are not the sphincter muscles always dilated? A There are two, one external and one internal.

Q The internal sphincter muscles, is not that dilated? A No, sir, not necessarily -- the external would be.

Q And the internal not be? A In a case of that kind, yes.

HARRY McCUTCHEN, called as a witness in rebuttal on 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 in the City of New York, and were so connected on the 14th day of February, 1903? A I was.

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

Q Did you ever go to the Ariston Baths at the northeast corner of 55th Street and Broadway? A I did.

Q When did you first go there? A The 14th of February, about 10 P. M.

Q 1903? A 1903.

Q Did you see this defendant there on the 14th of February, 1903? A I did.

CROSS EXAMINATION BY MR. SNITKIN:

Q Were you present at the last trial?

Objected to.

Objection overruled.

A No, sir.

Q You were not in the court room when this case was being tried? A I was not.

Q At no time? A At no time.

Q How many weeks ago was that case tried?

Objected to as immaterial.

Objection sustained.

Q At the time that case was tried you had the same information that you have now with reference to the 14th of February? A Certainly I had.

Q Did you give it to the District Attorney? A He did

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not ask me for it.

Q You were in the court room, weren't you?

Objected to.

Q Weren't you in the hallway of the corridor of these courts when Kregal's case was first being tried?

Objected to. Objection overruled.

A I don't remember that.

Q How many weeks ago is that? A I don't recollect the trial -- that is the day --

Q How many weeks ago was that?

Objected to. Sustained.

Q You don't remember whether you were in the hallway when the man was first tried and yet you remember he was there on the 14th day of February?

Objected to. Objection overruled.

A If I remember correctly I had a case in Special Sessions that same afternoon. I probably was in a court room, but not in this court.

Q In the same building? A In the same building, yes, but not in this court.

Q In the same building?

THE COURT: He has stated that.

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ROBERT H. HIBBARD, recalled in rebuttal,
testified as follows:

BY MR. RIX:

Q Did you go to the Russian and Turkish Bath place
establishment known as the Ariston Baths at the northeast cor-
ner of 55th Street and Broadway on the 14th day of February,
1903? A I did.

Q Did you see that defendant there on that occasion?
A I saw him there on the morning of the 15th of February.

BY THE COURT:

Q In what condition did you see him? A He was taking a
bath there. He was naked with a sheet around him and so was I.

BY THE COURT:

Q In what room did you see him? A In the parlor of that
place between the hours of one and two in the morning.

CROSS EXAMINATION BY MR. SWITKIN:

Q You did not testify to that--

THE COURT: Ask him the direct question.

Q Did you testify to that fact that you have just stated,
to the jury, on the first trial of this man? A I did not.

PEOPLE REST.

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JOHN ROGERS , called in behalf of the defendant,
being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. SNITKIN:

Q Do you remember being in the Ariston Baths on the 21st
of February, 1903? A Yes, sir.

Q Did you ever see Kregal? A I never saw that man.

THE COURT: What date was that?

MR. SNITKIN: The 21st of February.

BY MR. SNITKIN:

Q Or the morning of the 22nd of February? A I remember
it.

Q Did you see Kregal there? A I never saw that man
there.

Q Did you ever take his penis in your mouth?

THE COURT: This is reopening the case.

The only testimony that the District Attorney
introduced was medical testimony by Dr. Gibb, and
the testimony of two police officers relative to the
14th of February. I do not think this is such a
case that warrants the Court in stretching its
discretion to a very great length. I have afforded
you all the latitude I think the justice of the case
requires.

MR. SNITKIN: This is the last question.

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THE COURT: I will not permit this case to be reopened.

MR. SNITKIN: Will your Honor permit just this question?

THE COURT: I will not.

MR. SNITKIN: Will you hear me?

THE COURT: I will not.

MR. SNITKIN: He never saw that man.

THE COURT: That is improper, and, gentlemen of the jury, you will disregard expressions of lawyers.

TESTIMONY CLOSED.

MR. SNITKIN: I renew my motion and take an exception on the record.

MR. RLY: I understand that your Honor has stricken out all the testimony in regard to the witness Rogers?

THE COURT: Rogers testified he was there on that night. Of course, that will stand. As to the question, did he see the defendant on the night in question, I sustain the objection, and if he gave an answer, I direct it to be stricken out.

MR. RLY: And your Honor directs the jury to

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disregard that entirely?

THE COURT: Yes.

MR. SWITKIN: I except.

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