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COURT OF GENERAL SESSIONS OF THE PEACE,
COUNTY OF NEW YORK,
PART II.

The People
vs.
George W. Bushnell.

Before
HON. JOSEPH E. NEWBURGER, J.,
and a Jury.

Indicted for Sodomy.

Indictment filed December 27th, 1900.

Tried, New York, April 24th, &c., 1901

APPEARANCES:

For the People,

Assistant District Attorney John J. Delany;

For the Defense,

Amos H. Evans, Esq.

Frank S. Board,
Official Stenographer.

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(A jury was selected and sworn.)

In his opening address for the People, Assistant District Attorney Delany, having read the statute under which the indictment was drawn, said:

"This is a crime that under the old statute was called a crime against nature."

MR. EVANS: I object to that statement, and ask that the jury be directed to disregard it.

THE COURT: Objection overruled.

MR. EVANS: Exception. And I now ask that the stenographer take down the remainder of the opening of the District Attorney.

MR. DELANY: There is one principle that should guide us in the performance of our duty, and that is the law, no matter what our private opinion may be.

This offense has always been a crime under the Christian and under the Mosais dispensation.

Under other forms of civilization, this has been permitted, but the history of the world has shown that some of the most magnificent of human civilizations have been wiped out, at the very summit of their refinement, by the prevalence of crimes of this character.

I only mention this for the purpose of trying

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to disabuse you of any private opinions which you may have as to the propriety of such a law as this.

Our duty is to observe the law, no matter what our private opinions may be, and this is an age in which men indulge in philosophic vagaries, and sometimes we get into the jury box men whose own judgment will be placed by themselves before the provisions of the law.

Human civilization, just as soon as that becomes a principle upon which men act, must pass away.

If the law is wrong, there is a method to remedy it, but when we sit in an official capacity, either to construe or to execute the law, or to say whether the law has been infringed or not, all our opinions on the question must be left to one side.

The name of sodomy is a term that is unique, and is taken from the story of the Old Testament of the destruction of the two cities of Sodom and Gomorrah.

MR. EVANS: One moment. I object, if your Honor please.

THE COURT: Objection overruled.

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MR. EVANS: And we except.

MR. DELANY: And this particular offense has been given the name of sodomy, from the city of Sodom, which we have been taught was destroyed by the wrath of God on account of its peculiar wickednesses.

I do not say this, gentlemen, to do any more than to bring you into a receptive condition, wherein private notions as to the extent of the injury done to society may be dismissed, and where you will accept the law as expounded by the Judge, without any mental hesitation or without any reservation whatever.

Now, gentlemen, to come to the facts of the case, which we expect to prove. They are these:

In the City and County of New York the defendant at the bar was a resident, in the month of March, 1900. He had been a resident of the city for a considerable time before that, and in the course of his associations with young men and boys in the city he came across one Daniel G. Cole.

Mr. Cole, at the time, was employed in the Hotel Imperial.

This man, the prisoner, made his acquaintance, and induced him, for some time, to board with the

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defendant and his wife, because, shortly before that time, he had married; that is, the defendant had.

On one occasion the wife of the defendant was absent all night, visiting some relatives, and the defendant enticed this young man Cole into his own bed, and there committed upon him the crime of sodomy, by having carnal knowledge of or intercourse with, if you will, this Daniel G. Cole, by the anus.

Now, "anus" is a term coming from another language, that has been used by physicians for the purpose of giving a term to the extremity of the rectum; and the crime with which this man is charged is the introduction of his own penis into the body of Daniel G. Cole by the anus.

On this subject, and with regard to all the transactions in this phase of the case, we have the testimony of Daniel G. Cole, who will give you the facts, which, I trust, it shall not be necessary for me to go over, since you have to hear them on the stand, and it will be no harm if you hear them but once.

When Mrs. Bushnell, recently married to the

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defendant, returned, she found, upon the bed linen, evidences of the offense charged, or of a crime of that nature, in this respect: that she found stains of vaseline, which, according to the testimony of Cole, had been used as a lubricant by this man, in his endeavor to penetrate the body of Cole.

She also found, dried and hardened upon the bed clothing, seminal fluid, or a substance that, so far as she is able to testify, resembled seminal fluid, or that peculiar mucus which is ejaculated from the excitation of the glands of the penis of the man.

Some time after this, Mr. Anthony Comstock, whose name you have heard mentioned here today, having his attention called by certain people to matters that were transpiring in this city, sent a letter to this defendant and asked him to call at his office, and an interview ensued between the defendant and Comstock, which Mr. Comstock will himself recite to you, and which, we claim, contains admissions on the part of this man that he had been guilty of the crime with which he is charged.

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I think, gentlemen, that there may be some other incidents in the case, but, as I said before, on account of the objectionable character, I forbear to go into detail any more than I have gone, and I think you all thoroughly understand the nature of the case which is now on trial.

THE COURT: As we are now within a short time of the adjournment, and as the examination and cross-examination of the complainant will take some time, I think we had better adjourn now.

Before separating, gentlemen of the jury, it is my duty to caution you not to discuss among yourselves any subject connected with the trial of this case, and not to form or express any opinion thereon, until the case is finally submitted to you.

The court will now stand adjourned until tomorrow morning at half past ten o'clock.

(The trial was then adjourned until Thursday morning, April 25th, at 10.30.)

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April 25th, 1901.

TRIAL RESUMED.

DANIEL G. COLE, a witness called on behalf of the People, being duly sworn, testified as follows:

MR. EVANS: If there be any other witnesses in behalf of the prosecution, I move your Honor that they be excluded from the court room while this witness is testifying.

THE COURT: Yes. The clerk will make the announcement as to witnesses on both sides.

(The clerk makes the announcement.)

D i r e c t E x a m i n a t i o n :

BY MR. DILLANY:

- Q Mr. Cole, how old are you? A Twenty-two years of age.
- Q When were you twenty-two? A December 9th, 1900.
- Q December 9th, 1900? A Yes, sir.
- Q Do you know the defendant, George W. Bushnell? A I do.
- Q You do? A Yes, sir.
- Q How long have you known the defendant? A Over a year.
- Q When did you first make his acquaintance? A At the latter part of September, 1899.
- Q At the latter part of September, 1899? A Yes, sir.
- Q And where did you make his acquaintance? A He introduced himself to me at the Hotel Imperial, where I was en-

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ployed.

Q He introduced himself to you at the Hotel Imperial, where you were employed? A Yes, sir.

Q In what capacity were you employed at the Hotel Imperial?

A As telephone operator.

Q As telephone operator? A Yes, sir.

Q Did you see him after the time of his first introduction of himself to you? A Several times.

Q Several times? A Yes, sir.

Q How frequently? A I can't remember how many times. Very often.

Q Very often? A Yes, sir.

Q Did you ever go to reside in apartments which were occupied by him? A Yes, sir; after his marriage I did.

Q After his marriage you did? A Yes, sir.

Q How did you come to go to those apartments, to live there?

MR. EVANS: I object.

THE COURT: Objection overruled.

MR. EVANS: We except.

A At his solicitation, at his invitation.

MR. EVANS: We object to the answer, and move to strike it out.

MR. DELANY: That is consented to.

THE COURT: Yes, strike it out.

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BY MR. DELANY:

Q What did he say to you, if anything? A He told me that he desired to reform, and ----

MR. EVANS: One moment. I object, if your Honor please. He should state, what did he say to him, if anything, and when and under what circumstances?

THE COURT: Objection overruled. Finish your answer.

MR. EVANS: And we except.

A (Continued) And he told me that he desired to reform, and that he trusted that I would be very comfortable with himself and his wife; that he had desired me to live with them so that I might have a little social comforts and other amusements and enjoyments which I did not have then.

BY MR. DELANY:

Q How long had he been married at this time, the defendant?

A About two weeks.

Q About two weeks? A Yes, sir.

Q Well, what followed after this conversation, in which he invited you to go to lodge with him?

MR. EVANS: Objected to. I object to it, unless, if your Honor please, some time is specified.

THE COURT: Yes. Specify the time.

BY MR. DELANY:

Q Well, specify the time when this conversation happened and

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when thereafter you went to live with him? A At the Hotel Imperial. I can't remember the date.

Q Well, about what time? A Shortly after his marriage.

Q Shortly after his marriage? A Yes, sir.

Q When was his marriage? A I don't remember.

Q Well, do you remember in what month it was that he came to the Imperial Hotel and had this conversation with you?

A No, I don't remember. I think it was in October.

MR. EVANS: One moment. I object to what he thinks.

THE COURT: I will allow it.

MR. EVANS: And we except.

BY MR. DELANY:

Q Go on. A He invited me to live there.

Q I know. But when did you say it was? A Some time in October.

Q Was it before Christmas? A Yes, sir.

Q Do you know where you were residing at Christmas time?

A Yes, sir.

Q Where? A In Brooklyn.

Q In Brooklyn? A Yes, sir.

Q And it was before Christmas that this conversation between you and him took place? A Yes, sir.

Q Well, after that did he call upon you again at the Imperial Hotel? A Yes, sir.

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Q And did he have any conversation with you on the subject that he had spoken to you before off? A Yes, sir.

Q He had? A Yes, sir.

Q Well, did you, in consequence of that conversation, become a lodger in his apartments with himself and his wife?

A Yes, sir, I went to board there.

Q Yes. How long did you board there? A About three months.

Q What months were they? A January, February, March.

Q January, February, March? A Yes, sir.

Q Do you remember any day -- when you say you went to board with them, what do you mean by that? Do you mean that you took your meals there? A Part of the time I did, yes.

Q Did you occupy a bed there? A I did.

Q Do you know at what time in the month it was, what day in the month? A It was the first Sunday in March.

Q It was the first Sunday in March? A Yes, sir, the first Sunday in March.

Q And on that occasion did you have any conversation with this defendant? A I did.

Q At what time in the night before did you come into the house? Or let me ask you: When did Mrs. Bushnell absent herself? Was it on Sunday, or on Saturday? A On Saturday.

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- Q And she was absent from home how long? A Over night.
- Q Yes. A And returned Sunday.
- Q And she returned at what time on Sunday, as near as you can judge? A About four o'clock. I don't know exactly.
- Q Were you there every Saturday night during the month of March, and every Sunday? A No.
- Q No? A No.
- Q How far into the month of March did you remain there?
- A I left the ensuing week.
- Q After this Sunday upon which Mrs. Bushnell was absent from home, or Saturday night, rather? A Yes, sir.
- Q Now, on that Saturday night do you remember what time you came home to Bushnell's? A About 12.30.
- Q About 12.30? A Yes, sir.
- Q That was after midnight? A After my work was over.
- Q That was after midnight? A Yes, sir.
- Q And whom did you find in the house? A Nobody but Mr. Bushnell.
- Q Nobody but Mr. Bushnell? A No, sir.
- Q And just please tell his Honor and the jury what occurred between yourself and this defendant on that night?

MR. EVANS: I object, if your Honor please.

THE COURT: On what ground?

MR. EVANS: Upon what ground?

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THE COURT: Yes. *Auto*

MR. EVANS: Upon the ground that the indictment charges the commission of the crime on the 17th of March, and this conversation, as alleged by this witness, is stated to have taken place on the first Sunday of March.

MR. DELANY: The first Saturday night of March.

MR. EVANS: And upon that ground, it is immaterial and irrelevant.

THE COURT: Objection overruled.

MR. EVANS: We except.

BY MR. DELANY:

Q Just please tell his Honor and the jury what occurred between yourself and this defendant on that night? A I retired to my room -----

Q Just sit down and address the jury. A I retired to my room, and after I had been in bed for some time Bushnell came to me and asked me if I wouldn't go into his room.

I told him I preferred to stay where I was, but that it was very cold. There was no steam heat in my room.

Bushnell said, "Well, come in here. It is warm in here." "Well," I said, "No. I would rather not, because May --" meaning his wife -- "might catch on." He said, no, that nothing would happen, as he had thoroughly made up his mind

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to reform, and that I could go in with perfect safety, and after much talk and talking matters over I went into his room.

Q Just tell now everything that occurred there. No matter how degrading it may be, tell it in plain, straightforward English. A When I got into the room I got into bed, and the defendant attempted an assault.

MR. EVANS: One moment. I object to what he attempted.

THE COURT: No, strike that out.

BY MR. DELANY:

Q Don't tell what he attempted, but what he did.

MR. EVANS: I move to strike it out.

THE COURT: Certainly. Strike it out.

A Well, the defendant assaulted me.

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

MR. DELANY: I consent to that.

THE COURT: Yes, strike it out.

BY MR. DELANY:

Q Well, just tell in plain English what he did. Don't say that he attempted to do this or that, or that he assaulted you. Just tell what he did, what movements he made, and everything that he said or did, everything that happened there. What did he say to you when you got into bed with him or at some time subsequent to the time you got into bed

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with him? A He talked of Brother Gilbert, of the Priory Farm of Verbank.

Q What is that, the Priory Farm? A It was an Episcopal monastery.

MR. EVANS: I object to that, unless he knows what it is.

BY MR. DELANY:

Q Have you ever been there? A Never.

Q All right. Never mind, then.

MR. EVANS: Then I move to strike it out.

THE COURT: Yes, strike it out.

MR. DELANY: I consent.

BY MR. DELANY:

Q Now, just tell what he said, what Bushnell said. A He said that Brother Gilbert could ----

MR. EVANS: That is objected to. I object to anything about any Gilbert or anyone else being brought in.

THE COURT: Objection overruled. It is a conversation between the defendant and the witness, the witness says.

MR. EVANS: But it is not in regard to this transaction.

THE COURT: I cannot tell that.

MR. EVANS: We except.

THE COURT: Proceed.

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A (Continued) He said that Brother Gilbert was so hungry -----

BY MR. DELANY:

Q Tell straight out everything that he said to you. Now, the best way to do it is to tell it in his own words.

MR. EVANS: Objected to. I object to the District Attorney telling the witness what is the best thing to do or not to do.

THE COURT: Objection overruled. I think it is proper advise to give to the witness.

MR. EVANS: And I object to the District Attorney advising a witness on the stand. I submit that the only thing for him to do is to tell what occurred.

THE COURT: Objection overruled.

MR. EVANS: Exception.

THE WITNESS: Your Honor, the witness knows what to say, but it is too disgusting to repeat.

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

THE COURT: Motion granted. Strike it out.

BY MR. DELANY:

Q Now, tell everything that was said and done. Tell the whole story right out. A He said that Brother Gilbert could suck a regiment of men, and then be ready for more, and that Brother Gilbert had -- could not wait until he got

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into bed, before he attacked him, meaning Bushnell.

MR. EVANS: Now, I move to strike that out, if your Honor please.

THE COURT: Well, wait until he finished his answer.

MR. EVANS: That is his answer.

THE COURT: Proceed.

A (Continued) Then he seized me and attempted —

MR. EVANS: Objected to.

THE COURT: Objection sustained. —

BY MR. DELANY:

Q Now, don't tell what he attempted to do. Tell what he did do. A He seized me with his hands and forced his penis into my rectum.

Q Before he —

MR. EVANS: Just one moment. Now, I move, if your Honor please, that this conversation that he had in regard to Brother Gilbert, the statement of the witness, be stricken from the record.

THE COURT: Motion denied.

MR. EVANS: And we except.

BY MR. DELANY:

Q After — or prior to this time did he use anything upon his private parts? A Yes, sir. He used vaseline upon his organ, his penis.

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Q How long did this transaction take place? How long did it take for it to transpire? A I don't remember how long.

Q Well, give me as near as you can. Was it five minutes, two minutes, or ten minutes, or how long? A Five minutes at the most.

Q Did he do anything else than that which you have described? Did he do anything else, or put his arms around you, or anything of that kind?

MR. EVANS: Objected to. This is leading, your Honor.

THE COURT: Yes; you must not lead the witness.

MR. DELANY: I will not lead him, or at least I have no such intention, but it is a pretty hard subject to handle.

THE COURT: He may just tell what occurred.

BY MR. DELANY:

Q State the whole story? A Yes, sir. He embraced me and kissed me.

Q Now, after this transaction occurred what was the condition of the bed clothing? A Vaseline and ejaculations of semen.

Q What did you do after that? After this act was completed did you remain in bed with him? A No.

Q During the rest of the night? A No. I left the room.

Q Where did you go? A To my own room.

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- Q When did you see Bushnell again? A I went to church --
I went out of the house to church with him.
- Q Both of you went to church together? A Yes, sir. We
parted in the church.
- Q When did you return to the apartment? A After service.
- Q After service? A Yes, sir.
- Q When was it that Mrs. Bushnell returned? A Some time
between then and four o'clock.
- Q Some time between then and four o'clock? A Yes, sir.
- Q Now, then, let us see. When you rose in the morning you
remained in the house until Bushnell left the house with
you? A Yes, sir.
- Q Now, where is that house? A 121 East Forty-fourth
street.
- Q 121 East Forty-fourth street? A Yes, sir.
- Q In the County of New York? A Yes, sir.
- Q And where did you go to church? A To St. Chrysostom's
Chapel, on Seventh avenue.
- Q Seventh avenue and Thirty-ninth street? A Yes, sir.
- Q Did you walk to church? A Yes, sir.

MR. EVANS: Objected to, as leading.

THE COURT: Oh, I will allow it.

MR. EVANS: We except.

BY MR. DELANY: Q You were in his company all the way from the

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house to the church? A Yes, sir.

Q And at the church you parted? A Yes, sir.

Q And when did you join each other again? A After service.

MR. EVANS: Objected to, if your Honor please, as leading.

THE COURT: Objection overruled.

MR. EVANS: We except.

BY MR. DELANY:

Q During the service did you see him all the time?

MR. EVANS: I make the same objection.

THE COURT: The same ruling.

MR. EVANS: Exception.

A I saw him in the church building, yes.

BY MR. DELANY:

Q And after service did you return to the house? A Yes, sir, I did.

Q And did you remain there until Mrs. Bushnell returned?

A I did.

Q And when Mrs. Bushnell returned the defendant was present, was he not?

MR. EVANS: Now, does your Honor think that it is fair to lead the witness as the District Attorney is leading him?

THE COURT: No. You must not lead him.

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BY MR. DELANY:

Q Well, who was present, besides yourself and Mrs. Bushnell, at the time she returned? A The defendant.

Q The defendant? A Yes, sir.

Q Was there anybody else? A Miss Brimson.

Q Now, did any conversation take place in the presence of the defendant between Mrs. Bushnell and yourself in reference to what had transpired the night before? A On Monday morning.

Q On Monday morning? A Yes, sir.

Q What was that conversation?

MR. EVANS: I object, if your Honor please.

THE COURT: Objection overruled.

MR. EVANS: We except.

A I had had some trouble with the defendant on that morning.

BY MR. DELANY:

Q That is not what I asked you. A Well, but it leads up to it.

Q Well, just tell me what you said to Mrs. Bushnell or what Mrs. Bushnell said to you in the presence of the defendant.

A I said to Mrs. Bushnell, "If you knew what happened last night you would not live with your husband five minutes."

Q What did she say? A She asked me what I meant.

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MR. EVANS: Objected to. I object to any statement made by her.

THE COURT: Made in the presence of the defendant?

MR. EVANS: Yes, sir.

THE COURT: Objection overruled.

MR. EVANS: We except.

BY MR. DELANY:

Q She said what? Go ahead.

MR. EVANS: This defendant, if your Honor please, we submit, is not bound by what Mrs. Bushnell might say.

THE COURT: What she said in the presence of the defendant?

MR. EVANS: Yes, sir. Even in his presence, he is not bound by any statements that she might make.

THE COURT: It may be material to this issue. I will allow it.

MR. EVANS: Exception.

A She asked me what I meant.

BY MR. DELANY:

Q Go on. A I refused to tell her.

Q You did not tell her? A No, sir.

Q And she did not know what you meant by what you had previously said; is that it? A I think she did.

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

MR. DELANY: I consent to it.

THE COURT: Strike it out.

BY MR. DELANY:

Q Did Mrs. Bushnell say anything at the time? A Yes, sir.

Q What did she say? A She said she would make me tell it.

Q Was that all the conversation that there was? A No, there was something said in relation to Bishop Potter.

Q Now, don't be bringing in names of people that it is unnecessary to mention. I don't want you to do that. I only want you to tell anything that she said in the presence of the defendant in reference to this particular transaction.

MR. EVANS: I submit that he should be allowed to go on with his statement, if your Honor please.

THE COURT: No.

MR. EVANS: I objected, a moment ago, if your Honor please, to his bringing in a man named Gilbert, and your Honor overruled the objection.

THE COURT: Yes.

MR. EVANS: And the same ruling would apply now, would it not?

THE COURT: No. I will give you an exception, Mr. Evans.

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MR. EVANS: We except.

BY MR. DELANEY:

Q Now, don't be bringing in names of people that it is unnecessary to mention. I don't want you to do that. I only want you to tell anything that she said in the presence of the defendant in reference to this particular transaction. A Shall I tell you -----

Q Was anything said in reference to this particular transaction in the presence of the defendant at that time?

A Yes, sir.

Q What was said? A I said that I would expose him to Bishop Potter.

Q Yes. Well, what were his relations with Bishop Potter, that you threatened to expose him? A He held a lay reader's license.

Q And that is all you said? Did you make any allusion to the transaction that you have already testified to of the night before or of Saturday night or Sunday morning, or whatever time it happened to be? A No, nothing further.

C r o s s - E x a m i n a t i o n :

BY MR. EVANS:

Q You said that in the presence of Mrs. Bushnell and Miss Prim -- was that her name? A Brimson.

Q Brimson? A Yes, sir.

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Q On Monday morning, on the Monday morning following, that you would expose the defendant to Bishop Potter? A Yes, sir.

Q But, before this conversation that you had with Mrs. Bushnell and the defendant and Miss Brimson, you say that you had some trouble with the defendant? A Yes, sir.

Q Did that trouble occur on Monday morning? A Yes, sir, the trouble in question did.

Q It occurred on Monday morning? A On Monday morning.

Q And when that trouble occurred on Monday morning was the time that you concluded to expose him to his wife and to Bishop Potter? A I don't understand that.

Q After this trouble occurred on Monday morning you made up your mind to expose him to his wife and Bishop Potter, is that it? A Well, after an attempt on his part ----

Q Just excuse me a moment.

MR. DELANY: Let him finish the answer.

THE COURT: Let him finish the answer.

MR. EVANS: I submit that it is not responsive.

THE COURT: You cannot tell. If it is not responsive, you can move to strike it out. Finish your answer.

A Well, an attempt was made on his part to throttle me, and, if the attempt had been successful, I would not be

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here today.

MR. EVANS: I move to strike that out.

THE COURT: Motion denied.

MR. EVANS: Exception.

BY MR. EVANS:

Q You say he attempted to throttle you? A Yes, sir.

Q Attempted to choke you? A To choke me.

Q And that occurred on Monday morning? A On Monday morning.

Q Did he say he was going to kill you, or anything of the kind? A He threatened to.

Q He threatened to kill you? A Yes, sir. He threatened to jail me, incidentally.

Q Uh? A He threatened to jail me, incidentally.

Q He threatened to jail you? A Yes, sir.

Q And kill you too? A Yes, sir.

Q Both? A Both.

Q Well, he couldn't have done both very easily, could he?

A Well, he might have done one at one time and one at the other.

Q Well, where did that occur? A Where did what occur?

Q His threat to put you in jail? A In my room.

Q In your room? A In my room.

Q On Monday morning? A On Monday morning.

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Q And you say that his wife returned to the house on Sunday afternoon? A She did.

Q And when you came back from church you found her there?

A No.

Q When you came back from church? A No.

Q Well, when you came home on Sunday afternoon you found the wife there, didn't you? A Yes, sir; some time between twelve and four o'clock.

Q Some time between twelve and four o'clock? A Yes, sir.

Q And you did not state anything at all to her at that time in regard to what happened the night before? A No.

Q Didn't make any mention of it to anybody? A No.

Q And it was only after the threat on the part of this defendant to jail you that you made this statement to his wife? A I did.

Q And the reason of making that statement was because of the threat that the defendant had made to you? A No.

Q Isn't that so? A No.

Q Was it not because of the trouble that you had with him that morning? A No. I wouldn't take a revenge like that.

Q You would not? A No.

Q No? A No.

Q Well, why was it that you did not make the statement to Mrs.

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Bushnell on Sunday afternoon? A Well, that was a private matter of my own. I could expose him to Bishop Potter at any time, regardless of his wife.

Q Yes. Well, why didn't you expose him to his wife on Sunday afternoon, if it was not because of the trouble that you had with him on Monday morning? A Because of my great consideration for her.

Q On account of your great consideration for her? A Yes, sir.

Q Didn't you have as much consideration for her on Monday morning as you had on Sunday night? A But I did not expose him to her.

Q You did not? A No.

Q And the reason you did not was because of your consideration for her? A Exactly.

Q It was not because of any consideration for him? A None whatever.

Q No? A No.

Q When you say that you did not expose him on Monday morning what did you mean when you said in your direct examination that you told his wife that, if she knew what had happened on Sunday night, she would not live with him any more?

A Well, but I didn't tell her what had happened. A great many things might have happened.

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Q But you told her that, if she knew what had happened on Sunday night that she would not live with him any more?

A Well, he might have picked my pocket.

Q Isn't that so? A What is that?

Q Didn't you tell her on Monday morning that if she knew what had happened on Saturday night she would not live with her husband any more? A I did.

Q And you also told her that you would tell her further about it? Didn't you? A No, I refused to.

Q You refused to? A I refused to tell her.

Q And the only reason was on account of consideration for her? A Yes, sir, for consideration for her.

Q And the fact that you had trouble with this man in the morning made no difference at all? You wouldn't be that spiteful or revengeful, would you? A No, sir.

Q No? A No.

Q What is your right name? A Why, I have only one, Daniel George Cole.

Q Where do you live now? A Niagara Falls, New York.

Q Where? A Well, I haven't settled there yet. My old address is New Milford, Connecticut.

Q What? A Well, I haven't settled there yet. My old address is New Milford, Connecticut.

Q Well, that is your old address? A Yes, sir. I content-

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plate locating in Niagara Falls.

Q Well, have you located at Niagara Falls yet? A No, not yet, not permanently.

Q And then you don't live at Niagara Falls? A Well, I did, while I was there.

Q Eh? A What is that?

Q Do you live at Niagara Falls? A No, not at the present time I do not.

Q Well, have you ever lived at Niagara Falls? A Never before.

Q Eh? A No, sir.

Q Why did you state to me, when I asked you where you lived, that you lived at Niagara Falls? A Because I contemplate living there.

BY THE COURT:

Q Have you stopped there at any time? A I stayed in Buffalo on Sunday night, Monday night and Tuesday morning.

Q Of this week? A Yes, sir.

BY MR. EVANS:

Q Buffalo is quite some distance from Niagara Falls?

A Twenty-two miles or more.

Q Twenty-two miles or more? A Yes, sir.

Q Have you ever been in Niagara Falls? A Never before.

Q Have you ever been in Niagara Falls? A Yes, sir.

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Q When was the last time that you were in Niagara Falls?

A Monday afternoon.

Q Of this week? A Yes, sir.

Q Did you stop there over night? A In Niagara Falls?

Q Yes. A No, sir; I stopped at Buffalo.

Q Have you ever stopped there over night? A No, sir.

Q Have you any relatives there? A No, sir.

Q Any friends there? A No, sir.

Q When do you propose to go there to reside? A That is a personal matter.

Q When do you propose to go there to reside? A That is a personal matter.

MR. EVANS: I submit, if your Honor please, that I am entitled to an answer.

MR. DELANY: If your Honor please, I object to it, on the ground that counsel has no right to ask him what his future is going to be.

THE COURT: Objection sustained.

MR. EVANS: And we except.

BY MR. EVANS:

Q And where is the last place that you have lived? A New Milford, Connecticut.

Q With your parents there? A No.

Q Whom did you live with there? A I lived in the hotel

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there.

Q What hotel? A The Wayside Inn.

Q The Wayside Inn? A Yes, sir.

Q Under the name of Daniel G. Cole? A I never lived under any other name in my life.

Q Did you live there under the name of Daniel G. Cole?

A Daniel G. Cole.

Q How long did you live there? A From November 12th until last Saturday.

Q And then you went to Buffalo and Niagara Falls? A On business.

Q On business? A Yes, sir.

Q For whom? A Myself.

Q What was the nature of the business? A I decline to answer.

MR. DELANY: I object to the question, as being immaterial.

THE COURT: Objection sustained.

MR. EVANS: Exception.

BY MR. EVANS:

Q What is your business? A A student.

Q A student? A Yes, sir.

Q A student of what? A I decline to answer.

Q Upon what ground do you decline to answer? A Because

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it is my business, what I am a student of.

MR. EVANS: I submit, if your Honor please, that I am entitled to an answer to the question.

THE COURT: The witness is instructed that he must answer the question, unless it will tend to degrade or incriminate him.

THE WITNESS: It does not degrade me.

THE COURT: Then answer the question.

A I am seeking a classical education.

BY MR. EVANS:

Q You are seeking a classical education? A Yes, sir.

Q Preparing for college? A Preparing for college.

Q Where do you go to school? A Until recently I went to the Rectory School in New Milford, Connecticut.

Q How long has it been since you went to that school?

A November 14th.

Q And since that time have you been going to school anywhere?

A Yes, sir; the Rectory School.

Q I thought you said you stopped going there in November?

A Well, since when do you mean?

Q I mean since November. You say you are a student now.

A I am, yes.

Q And where do you study? A Well, at present I have business engaging my attention.

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Q Well, then, you are engaged in business, are you? A No, personal business, engaging my attention.

Q Well, are you a student, or are you engaged in business?

A I am a student.

Q Are you engaged in any business? A Part of the time, yes.

Q What kind of business are you engaged in? A The last, I was a clerk at the Wayside Inn.

Q Clerk in the hotel line? A Yes, sir.

Q And for how long a time were you a clerk there? A From November 12th until last Saturday.

Q And then you left there? A Well, I have not decided whether I have left there or not.

Q You have not decided whether you have left there or not? A No, sir.

THE WITNESS: Your Honor, has the attorney for the defense any right to ask me that question?

THE COURT: Yes. Answer the question.

BY MR. EVANS:

Q Don't you know whether you have left there or not? A No, I do not.

Q Why don't you know that? A It is conditional, whether I have left there or not.

Q Well, didn't you say a minute ago that you contemplated

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living in Niagara Falls? A I did, yes.

Q Well, you couldn't live in Niagara Falls unless you lived there, could you? A Live where?

Q Well, you couldn't live in Niagara Falls unless you lived there, could you, unless you gave up the clerkship in this hotel? A Yes.

Q You could? A Yes.

Q You could live in Niagara Falls and keep your position as clerk at the hotel over in Connecticut? A Under certain conditions I could.

Q You could come in every morning from Niagara Falls and go to business and go back at night; is that true? A No.

Q No? A No.

BY THE COURT:

Q What you mean to say ----

BY MR. EVANS:

Q Do you mean to say that you could live in Niagara Falls and keep your position as clerk in this hotel? A Under certain conditions.

Q Under what conditions? A Under the conditions that, if I am successful in prosecuting the business in Niagara Falls, I give up my position there, and, if not, I return to my situation.

Q And you are kept on and paid whether you work at the Wayside

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Inn or not? A Well, the paying matter is a personal matter.

Q Well, I suppose you work for nothing? A I work for a consideration.

Q Well, then, when do you do your studying, if you are clerk in this hotel? A At the school and at night.

Q At the school ---- A At the Rectory School.

Q At the Rectory School? A Yes, sir.

Q But you have not been there since November? A Oh, why, certainly.

Q Have you been there since November? A Been where?

Q At the school. A Why, yes.

Q Right along, all the time? A No. In the absence of the manager I take his place.

Q In the absence of what manager? A The manager of the hotel.

Q And how long was that? A How long did this absence occur, do you mean?

Q No. How long was the manager of the hotel away? A Oh, I am sure I don't remember.

Q You don't remember? A No.

Q Was it a week? A One time he had the grip, and he was away for over a week, and another time ----

Q Now, why can't you be clear and outspoken as to what your

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business is or what you do? A What my business is?

Q Yes. A Just what I told you.

Q You don't go to school, do you? A I do.

Q And how long has it been since you were at school? A At the end of last term.

Q When was that? A Good Friday.

Q Good Friday? A Yes, sir.

BY MR. DELANY:

Q What date was that?

BY MR. EVANS:

Q Why didn't you state in answer to my question as to whether you had any business or not that you were a clerk at this hotel? A Because I didn't consider — I don't receive any salary for my work, and I really don't think I am in business.

Q And you don't want people connected with that hotel to know that you are a witness in this case? A They know it already.

Q Eh? A They know it already.

Q They do? A Yes, they do.

Q And they know the circumstances connected with the matter?

A Yes, sir.

Q And you told them that before you took your position up there? A No.

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- Q After you did take your position you told them the circumstances, did you? A When I was subpoenaed by the court I gave my reasons.
- Q And told them the nature and character of the case? A So far as it was necessary, yes.
- Q So far as you thought necessary? A Yes, sir.
- Q And then you stopped? A So far as my patrons thought it was necessary.
- Q Now, where were you born? A At College Point, New York.
- Q Now, are your parents living? A My father is.
- Q Is your mother living? A My mother is dead.
- Q Where does your father live now? A He lives at College Point now.
- Q What is his name? A Alfred Cole.
- Q Have you lived with him any time recently? A Yes, sir. I lived with him for two months about a year and a half ago.
- Q Since that time have you lived with him at all? A No.
- Q You make your own living, do you? A I do.
- Q Now, you say that you received a subpoena on last Saturday.
- A No, I received it before that.
- Q When was it that you received it? A Which do you mean? The first subpoena?
- Q No. I mean the one on which you come to this court now.
- A I am sure I don't remember.

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Q Well, was it last week? A Yes, sir.

Q Some day last week that you received that subpoena?

A Some day last week.

Q And you were up in Connecticut at the time? A Yes.

Q And you knew that a subpoena from a court in this State could not compel you to come here, didn't you? A Could not compel me to come here?

Q Yes. A I had pledged my word to come.

Q You had pledged your word to come? A Yes.

Q And you came here in answer -- to make good the pledge that you made? A Also in obedience to the court.

Q Yes? A Yes.

Q And who did you give that pledge to that you would come?

A (No answer).

MR. DELANY: Give the name of the person. He wants the person whom you promised that you would come here.

A Mr. Anthony Comstock.

BY MR. EVANS:

Q And when did you make that pledge to him? When you swore to the affidavit in this case? A I promised him some day last week.

Q Was that the first promise that you had ever made to him that you would come to court when this case came up for trial?

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A No. It was an understood thing that I would come.

Q Yes. You had given your pledge that you would come? You were perfectly willing to come? A I said I would come.

Q If they notified you, it made no difference where you were, you would come? A Yes, sir.

Q You were perfectly willing to come? A No.

Q Weren't you? A No.

Q You were not willing to come? A No.

Q You didn't want to come? A No.

Q Then why did you come? A Because I thought it my duty to come.

Q And you just came as matter of duty? A Yes, sir.

Q And you think it is your duty to give your testimony in this case and endeavor to convict this defendant? A So far as I am concerned, I give my testimony.

Q And you think it is your duty to do it? A I do.

Q What makes you feel as if it were your duty to do that?

A For the injury that I myself have received, and to prevent any further injury.

Q Yes. On yourself? A Oh, not exactly on myself.

Q On anybody else? A Yes.

Q And do you think a man like this ought to be convicted?

A I think he ought to be punished, yes.

Q Yes. How about yourself? A Well, what do you mean?

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Q Uh? A What do you mean?

Q Don't you think you ought to be punished, too? A Well, I think we ought all to be punished for some things.

Q For some things? A Yes.

Q Don't you think that you ought to be punished for your part in this transaction? A What part?

Q Didn't you submit to this? A No.

Q You did not? A No.

Q The matter occurred -- the occurrence took place against your will, did it? A Yes.

Q When he went in and asked you to come into the other room you objected, didn't you? A I told him I didn't want to.

Q You didn't want to? A No.

Q And you told the reason why, didn't you? A Yes.

Q What was that reason? A Well, I thought that ----

Q Don't you remember the reason that you gave to the District Attorney upon the direct examination? A This morning?

Q Yes. A The reason that I didn't wish to go ----

Q The reason why you did not wish to leave your own room and go into his room? A Yes; because May, meaning his wife, might catch on.

Q Yes. A And because I didn't want to.

Q Yes. Now, then, you told him the reason why you didn't want to go into his room was because May, his wife, might

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catch on? A It was not the only reason.

Q Well, but that is the reason you gave him? A One of them.

Q Yes. A Yes.

Q And that was the principal reason why you did not want to go into that room? A I didn't say that it was the principal reason.

Q Well, it was one of them? A Yes, it was one of the reasons.

Q And you so state to me now, that that was one of the reasons? A Yes.

MR. DELANY: Why, certainly. He is stating it over and over again.

BY MR. EVANS:

Q Now, you knew what was going to take place if you went in there? A Well, I surmised that something would.

Q Yes. And notwithstanding your surmise that a thing of this kind was going to take place you went in? A Yes, sir, under certain conditions I did.

Q Yes. You went in under certain conditions? A Yes, sir.

Q Now, do you mean to say that you went in against your will?

A No, because I controlled my own will.

Q Yes. Then when you went in, you surmised what was going to take place, and notwithstanding that, you went in there voluntarily yourself, didn't you? He didn't pick you up

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and carry you in, did he? A No.

Q Well, that was not against your will, was it? A What?

Q That you went into his room? A Well, that is a ridiculous question.

Q Well, it may seem so to you. It might not to others. It was not against your will that you went into his room, was it? A Well, no. If a man says that he is going to do a thing and makes up his mind to do it, it is not against his will.

Q Then why did you state a minute ago to me that this occurrence took place against your will? A Because it did.

MR. DELANY: You are speaking of different things.

You are speaking of going into the room.

MR. EVANS: Well, he says he knew what was going to take place in the room.

BY MR. EVANS:

Q Well, nothing took place in your own room, did it? A No.

Q Then do you mean to say that this man could get on top of you, with your face down, and put his penis in your rectum, against your will? A Yes.

Q You mean to say he could? A Yes.

Q And you mean to say he did? A Yes.

Q And you mean to say that that is just as truthful as the rest of your testimony in this case? A Every bit.

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- Q Yes. How old are you? A Twenty-two years of age.
- Q How much do you weigh? A Over one hundred and twenty-five pounds.
- Q Now, in your affidavit that you made -- you made that affidavit down at Mr. Comstock's office, didn't you? A Yes.
- Q Do you remember the date that you made it? A No.
- Q It was "sworn to before me this 12th day of December, 1900." That was the date that you made it? A The 12th of September?
- Q No; the 12th of December, 1900. A Well, if you will let me see the signature I will tell you.

MR. EVANS: Will you hand him the original papers, Mr. Clerk?

THE COURT: Yes, here they are.

THE WITNESS: Yes, that is right.

BY MR. EVANS:

- Q That was the date that you made it? A Yes.
- Q In that affidavit -- what did you make a note of there?
- A The date of the affidavit.
- Q In the affidavit you state that this occurrence took place on the 17th of March, don't you? A So far as I remember.
- Q Yes. "Deponent verily believes that Saturday, March 17th, was the night that the said Bushnell assaulted him in his room." That is true? You swore to that in your affi-

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davit, didn't you? A I said I believed it to be.

Q Yes, that you believed it to be? A Yes.

Q On your direct examination in this case you stated that it occurred on the first Saturday night in March, didn't you?

A Well, that was really the first Sunday in March.

Q On your direct examination in this case you stated that it occurred on the first Saturday night in March, didn't you?

A I said the first Sunday in March.

Q You said the first Sunday in March? A Yes, sir, the first Sunday in March.

Q Well, now, which is correct? The statement that you made in your affidavit, that you believed that Saturday, March 17th, was the date, or your statement here upon the witness stand, that it was on the first Sunday of March? Which is correct? A In my affidavit I said that I believed it to be ----

MR. EVANS: One moment. I object.

THE COURT: Well, let him finish his answer.

MR. EVANS: Well, I object to his answer. It is not responsive. I asked him which is correct, and I am entitled to a direct answer, I submit.

THE COURT: Let the witness finish his answer. Finish your answer.

A (Continued) I said, in my affidavit, that I believed

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it was the 17th of March.

BY MR. EVANS:

Q Yes. A I now know it to be the first Sunday in March.

Q How is it that you know now that it was the first Sunday in March, and at that time you said that you believed it was on Saturday, the 17th of March? A I may have forgotten in the meantime.

Q What? A I may have forgotten in the meantime.

Q Well, when you made the affidavit in December, the matter was fresher in your mind then than it is now? A No.

Q Don't you think that your memory was better six months ago than it is today in regard to this transaction? A No, decidedly not.

Q You think that your memory improves as time goes by, do you?

A Yes.

Q Eh? A Yes.

Q Was your memory bad at that time? A No, it was not bad. It was subject to freaks.

Q It was subject to freaks? A Yes, sir.

Q Are you freaky now; are you? A No.

Q No? A No.

Q Were you subject to freaks between the 17th day of March and the 12th day of December, 1900? A Do you mean freaks of memory?

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Q Yes. A I am sure I don't remember.

Q How was your mind around about the 17th day of March?

A How was it?

Q Yes. Good, bad, or indifferent? A Well, my mind is always good.

Q Always good? A Yes.

Q And always has been good? A Yes.

Q And notwithstanding that fact you say that you remember better today than you did in December; is that right?

A Well, I may remember better as a comparative degree.

Q You say that your mind or memory becomes better as time elapses? A Under certain conditions it does.

Q Under certain conditions? A Yes, sir.

Q Well, in regard to this transaction your mind is better today than it was in December? A Yes.

Q Why did you wait from the 17th day of March until the 12th day of December, over eight months, before you made any accusation against this man? A For my own sake.

Q For your own sake? A Yes.

Q Why, you said that you determined to get even on the Monday morning after this transaction? A I never used any such words.

Q You did not? A No.

Q Didn't you say that you had trouble with him? A I had

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trouble with him, yes.

Q And it was after you had the trouble with him that you spoke to his wife about it? A Yes.

Q You didn't want to go to the front yourself; is that the idea? A Well, I had my reasons for that.

Q You didn't want to make the accusation, did you? A I don't think it necessary for a man to dip his fingers in the ink, unless he is bound to do it.

Q Well, your fingers had been dipped, hadn't they? A On the defendant's part, yes.

Q Yes. Upon his mere call and invitation for you to step into the other room? A Yes.

Q And your whole body was steeped in it, was it not?

MR. DELANY: I object to this, your Honor.

MR. EVANS: I will withdraw the question.

BY MR. EVANS:

Q Now, between the 17th day of March and the 12th day of December you had some compunctions on your part in regard to the matter, did you not? A I had some what?

Q You didn't want to take any part in making any charge against this defendant? A No.

Q No? A No.

Q Why did you happen to come to the conclusion in December that you wanted to make the affidavit? Was it a sudden

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conclusion on your part? A No.

Q No? A No.

Q You had been studying over it, had you? A Thinking it over.

Q All the time? A Yes.

Q Had you seen Mrs. Bushnell? A Had I seen her?

Q Yes, in the meantime? A Yes.

Q Yes? A Yes.

Q Talked with her, had you? A Over matters, yes.

Q Different things? A Yes.

Q And talked with her over this matter, hadn't you? A Yes, incidentally.

Q And you knew that Mrs. Bushnell was not living with her husband? A Yes.

Q And you knew that the reason why she was not living with her husband was because of the statement that you made on this Monday morning? A Not altogether, no.

Q Well, but you knew that it had a good deal to do with it, didn't you? A It had something to do with it, yes.

Q Yes? A Yes.

Q And you did tell her all about the circumstances connected with this matter on that night, didn't you, afterwards?

A After I learned that she had exposed her husband, yes.

Q Yes? A Yes.

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- Q How soon after the Monday morning that this took place did you tell Mrs. Bushnell all about it? A I am sure I don't remember.
- Q Was it a week? A Oh, more than a week.
- Q Was it a month? A Yes, more than a month.
- Q Was it six months? A I am sure I don't remember.
- Q Was it not just prior to December 12th, when you swore to this affidavit? A Yes.
- Q Yes, just before that? A Yes.
- Q Did you go to see her? A No.
- Q Did she come to see you? A Yes.
- Q And wanted to get rid of the defendant, didn't she? A No.
- Q She wanted to get a divorce from him, didn't she? A No.
- Q She did not? A No.
- Q She did not state that to you? A No.
- Q Talked pretty ugly about him, didn't she? A I think she acted very nicely.
- Q About him? A Yes.
- Q Yes? A Yes.
- Q And how many times did you see her in the meantime, between the 17th day of March and the 12th of December? A As far as I remember — oh, once.
- Q How many times did you see Mrs. Bushnell? A Once.
- Q Only once? Between the 17th day of March, 1900, and the

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12th day of December, 1900, how often did you see Mrs. Bushnell? A Twice. It was once in New Milford and once in New York.

Q Yes. Did she go with you to Mr. Comstock's office when you swore to this affidavit? A I met her there.

Q Yes. You knew she was going to be there, didn't you?

A Yes,

Q And made an appointment to meet her there? A No, not exactly an appointment.

Q And did you swear to that affidavit at Mrs. Bushnell's solicitation? A No.

Q You did not? A No.

Q Then why did you swear to that affidavit? A I thought it my duty to do so.

Q You didn't think it was your duty from the 17th of March up until that time, did you? A Well, I thought it my duty, but I didn't put it into action.

Q You did not put it into action? A No, sir.

Q Well, why were you eager to put it into action at that time? Was it not after your conversation with Mrs. Bushnell?

A Yes, sir; it was after the conversation.

Q Yes. And after your appointment to meet her at Mr. Comstock's office? A No.

Q Eh? A No.

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- Q Why, she was present at the time when the affidavit was made out? A No.
- Q She was not? A No.
- Q Didn't you tell me a moment ago that she was at Mr. Comstock's office when the affidavit was made out? A She was there, but she was not present when the affidavit was made out.
- Q Ah, just in another room? A Yes.
- Q Yes? A Yes.
- Q And let me just get this straight, will you? You made the appointment to meet her there? A No, I didn't make any appointment.
- Q Well, you knew she was going to be there? A Yes, but it was not necessarily an appointment.
- Q But you knew that she was going to be there, and you happened to be there at the same time? A Yes, sir.
- Q Well, how long was it before you met her at Mr. Comstock's office that you had this conversation with her? A The day before.
- Q The day before? A Yes.
- Q And did she ask you to go to Mr. Comstock's office? A No.
- Q She did not? A No.
- Q Did she say that she was going to be there at a certain time? A She mentioned the fact.

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- Q Yes. Didn't she suggest that you be there? A No, she did not suggest it.
- Q Was it a mere coincidence that you happened to meet her there? A Exactly.
- Q Nothing else? A Nothing else.
- Q Nothing else? A No, sir.
- Q Now, do you mean that for the truth? A Yes. What I stated, I mean for the truth.
- Q Yes. That you just happened to meet her at Mr. Comstock's office? A Well, she said that she would be there, and I said I would be there.
- Q And you said that you would be there? A Yes.
- Q And when did she say this to you? The day before? A The day before.
- Q Yes. And when you got there you were turned over to Mr. Comstock? A I was not turned over, no.
- Q Eh? A I was not turned over, no.
- Q Well, you went into the room with Mr. Comstock, and this affidavit was drawn? A Yes, I walked into his office.
- Q Do you know Mr. Stromberg? A Yes. But not "Mr." I know a boy by the name of Stromberg.
- Q Yes. You know a Stromberg? A Yes.
- Q Well, do you know whether or not Mrs. Bushnell knows Stromberg? A Why, yes, she knows him.

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- Q You know that, do you? A What is that?
- Q That she knows him. A I know that she knows such a person, yes.
- Q Yes. And you know Mrs. Bushnell very well? A No, not very well. I know her.
- Q And you are interested in her welfare, aren't you? A I am interested in everybody's welfare.
- Q Yes. But you are particularly interested in her welfare, aren't you? A No, not particularly.
- Q Why, didn't you start these proceedings after you had refused to come out and make them yourself for six months; didn't you at her request swear to this affidavit and cause this man's arrest? A No, not at her request.
- Q You are the man that was present on the night that Mrs. Bushnell was found in Stromberg's room? A I don't believe she was ever found in it.
- Q You don't believe so? A No.
- Q I am asking you the question: Are you the man that was present at the time that Mrs. Bushnell was found in Stromberg's room?

MR. DELANY: I object to this, for no other reason in the world than that I think it is a dastardly attack upon a woman who is not present, and the honor of a gentleman ought to be pledged to such a statement

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as that.

MR. EVANS: What do you mean by that?

THE COURT: One moment, Mr. Evans. The objection will be sustained, on the ground that it is immaterial.

MR. EVANS: Yes, sir, and we except.

BY MR. EVANS:

Q You spoke about a man by the name of Brother Gilbert.

A Yes.

Q Do you know Brother Gilbert? A No.

Q You don't know him at all? A I don't know him at all, no.

Q Do you know Bishop Potter? A No.

Q Why were you -- did you ever go to Bishop Potter and expose this man? A No.

Q You merely threatened to do so? A I threatened to do so, and at the time I sincerely purposed to do so.

Q Yes. And because you had reformed yourself? A Reformed?

Q Yes. A Reformed from what?

Q From committing sodomy. A Oh, committing sodomy?

Q Yes. A Can you charge me with committing sodomy?

Q I do. A When?

Q On the night of the 17th of March, or the first Sunday in March, as you have sworn to.

MR. DELANY: That is objected to.

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BY MR. EVANS:

Q Didn't you submit to this man's -----

THE COURT: You must not laugh, witness.

THE WITNESS: But, your Honor, this man makes such outrageous accusations. The whole thing is an amusing farce.

THE COURT: No. It may be amusing to you, but it is a very serious matter.

THE WITNESS: I realize that.

THE COURT: You do not seem to realize it.

THE WITNESS: But this man makes such ridiculous statements.

THE COURT: Now, stop. Stop. Proceed with your questions, Mr. Evans.

MR. EVANS: That is all, sir.

R e - D i r e c t E x a m i n a t i o n :

BY MR. DELANY:

Q Who is Stromberg? A He is a boy at the Holderness School, Plymouth, New Hampshire.

Q Was he connected with this church that the defendant was connected with, Stromberg? A Well, I am sure I don't know.

Q How old is Stromberg? A Well, I think about fifteen or sixteen.

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- Q You think about fifteen or sixteen? A Yes.
- Q And was he a boarder at the youse, too, where you were, at another time? A He was, prior to Bushnell's marriage.
- Q Yes. After Bushnell's marriage did he ever stop at Bushnell's house, as far as you know? A On a visit, yes.
- Q Now, will you please just tell us how the Bushnell apartment was laid out, so that we may understand it? Just describe it. Was it a flat? Describe it as nearly as you can.
- A It was a flat on the fourth floor front of 121 East Forty-fourth street.
- Q Yes. How many rooms? A Consisting of three rooms and a bath.
- Q The rooms were arranged in what fashion? A One large room ----
- Q A sitting room or parlor? A Yes. Also used as a bedroom.
- Q Yes. A And one long room on the left.
- Q Did that adjoin the large room already spoken of? A Yes, sir.
- Q What was that used for? A That was used as the defendant's office.
- Q Yes. And then where was the other room? A The other room was a small pantry-like arrangement.
- Q What was that used for? A For those purposes.

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- Q For what purposes? A For a pantry.
- Q When you say pantry, do you mean kitchen where cooking was done? A Well, those small places are used for pantry and kitchen and everything else.
- Q So that there was a kitchen, a room that was used as an office, and a sitting room, which served the double purpose of a bedroom? A Yes, sir.
- Q Where did you sleep during the time that you were a boarder there? A This long room that I have referred to was also used as a bedroom.
- Q Were those the same apartments that the defendant occupied before his marriage, or were they apartments that he took afterwards? A The same. One minute.
- Q Now, there is some question about your memory of last year—
A One minute. I don't think they were the same. I am sure I don't remember about that.
- Q Now, during a portion of the time between March and November of last year you were ill, weren't you, in the hospital?
A Yes.
- Q For how long? A Forty-one days.
- Q And you went under an operation? A I did.
- Q For what? A Fistula in ano.
- Q And what time were you in the hospital? A From May 5th to June 15th, I think.

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Q And when you came out of the hospital what did you do?
There has been some question as to what your occupation was,
so I want you to tell us just what you did. A I was
telephone operator.

Q You were telephone operator at the Imperial? A No. I
was telephone operator at different hotels.

Q Well, I know. But at this time in March, 1900, you were
the telephone operator in the Imperial, weren't you?

A What were those dates, please?

Q In the month of March of last year, the time when the al-
leged crime was committed. A Yes.

Q And how long did you remain there? A At the Hotel Im-
perial?

Q Yes. A Until I was removed from there to another hotel.

Q And what hotel did you go to, were you removed to? A I
am sure I don't remember. There were so many of them.

Q You went around in a circuit? A Yes, sir, on a system.

Q On a system? A Yes.

Q And then in the month of May you went into the hospital?

A Yes.

Q And then you remained in there well into the month of June?

A Oh, yes; quite well into it.

Q And after you got out of the hospital where did you go?

A I went to work.

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- Q Went back to the same business? A Oh, yes.
- Q And then in November -- you worked along at that until the month of November, and then in November you went up to New Milford, Connecticut? A Yes, to school.
- Q And when you went to New Milford you went to the Wayside Inn as an employé, that is, you were working your way through school; is that it? A Yes, that is the idea.
- Q And you were giving your free time to the Wayside Inn?

MR. EVANS: Objected to. I object to Mr. Delany doing the testifying.

MR. DELANY: Oh, that doesn't amount to anything.

THE COURT: However, do not lead him.

BY MR. DELANY:

- Q Now, you said something about living at Niagara Falls. Do I understand you to say that you have ever, up to this time, resided there? A Never.
- Q But you have in contemplation a change of residence?
- A Exactly.
- Q You said in answer to -- or the question was asked you by counsel for the defendant -- why you considered it to be your duty to be a witness in this case. Will you please tell us why you consider it to be your duty to be a witness in this case? A Well, for humanity in general.

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Re - Cross Examination:

BY MR. EVANS:

Q Do the authorities at Niagara Falls know that you contemplate going there to reside? A Who do you mean by the authorities?

Q I mean the police officials.

MR. DELANY: Now, I object to that, if your Honor please. If it is meant to intimidate this witness it is a contempt of court.

THE COURT: I exclude the question.

MR. EVANS: We except.

BY MR. EVANS:

Q You say that it was on the first Sunday of March that this occurred? A The first Sunday of March.

Q Now then, what is the date of the year that this man found you in bed with Mrs. Bushnell? A It never happened in my life.

BY MR. DELANY:

Q Has that accusation ever been made before, that you were found in bed with Mrs. Bushnell? A Yes, sir; it has been made.

Q When was it made? A It was made by Bushnell in the presence of his wife.

BY MR. EVANS:

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Q It was made by Bushnell in the presence of his wife? When?

A I don't remember the date.

Q But this is not the first time that this accusation has been made? A No, it is not.

Q No? A No.

BY MR. DELANY:

Q One moment. What was this quarrel about that you say you had with Bushnell on this Monday morning? A Over my leaving the house.

Q Over your leaving the house? A Yes.

Q You insisted on leaving the house? A Yes.

M A Y A L B Y B U S H N E L L, a witness called in behalf of the People, after being duly sworn, testified as follows:

MR. EVANS: Are you going to recall the last witness?

MR. DELANY: I think so. I can't tell you that now.

It may be necessary.

MR. EVANS: Then I want him to go out. The last witness, if your Honor please, is still in the court room. I should like him to go out if he is going to be called again.

MR. DELANY: I can't say now whether I will recall him or not.

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THE COURT: Then let him leave the court room.

MR. EVANS: And I understand that there are other witnesses who are going to be called in this case, and I submit that this witness ought to go somewhere else than with the other witnesses who are going to be called.

THE COURT: Oh, no. Let him proceed outside. Now proceed with the case.

D i r e c t E x a m i n a t i o n :

BY MR. DELANY:

Q Now, Mrs. Bushnell, please speak up distinctly, so that every gentleman here may hear you, and use language as simple and direct as you can, no matter how much effort you may have to make to do it. You are the wife of the defendant? A Yes.

Q And you were married to him when? A October 25th, 1899.

Q October 25th, 1899? A Yes.

Q Prior to your marriage with him how long had you known him?

A I think I met him in '89.

Q And you have known him ever since? A Yes, sir.

Q That is, you have seen him frequently? A Yes.

Q And in October, 1889, you were married? A '99.

Q '99? A Yes, sir.

Q And after your marriage where did you go to reside?

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A We came directly to New York.

Q By the way, where were you married? A In Lombard.

Q Ohio? A Illinois, my home, a suburb of Chicago.

Q Yes. And after your marriage you came directly to New York? A Yes, sir.

Q And where did you go to live? A 109 East Forty-fourth Street, in a bachelor apartment.

Q Apartments which he had at that time been keeping?

A Yes, sir.

Q Now, during the time that you had been living there, had you had any other tenants in the flat with you, were there any other people who boarded or lodged there? A Yes, sir.

Q Now, just tell us who they were. A The first one was a friend of my husband by law, Mr. William Spittler.

Q Yes. A The second was Daniel G. Cole.

Q Yes. So that practically ever since your marriage there was always another person in the house besides yourselves?

A Nearly all of the time.

Q Now, how many rooms were there? Just please tell us how they were situated. A Three rooms, two adjoining and a small trunk room that I used for a kitchen across the hall.

Q Did that make four rooms? A Three.

Q Three? A Yes, sir.

Q You used this little trunk room for the purposes of a kit-

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chen? A Yes.

Q And in addition to that there were two other rooms?

A Yes, sir; two other rooms; one a large room and a smaller room which my husband used as an office.

Q Now, do you remember having been absent from home during the month of March, 1900, over night? A Yes.

Q When was it, do you recall? A The first Sunday in March.

Q When did you leave home? A I left home Saturday afternoon between three and four o'clock.

Q Yes. And where did you go? Did you leave the city?

A Yes. I went to Richmond Hill to stay over night with my husband's uncle.

Q Yes. And when did you return home? A Sunday afternoon, about five o'clock.

Q Sunday afternoon about five o'clock? A Yes, sir.

Q Now, did you do your own housekeeping? A Yes, sir.

Q You made your own beds? A Yes, sir.

Q And put on your bed linen? A Yes, sir.

Q Now, when you left the house on Saturday had you made up the bed in the room? A Certainly.

Q You made the bed on Saturday? A Yes, sir.

Q Now, what was the condition of the bed linen on that bed on Saturday when you left home?

MR. EVANS: Just one moment. I object, if your Honor

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please.

THE COURT: Objection overruled.

MR. EVANS: And we except.

BY MR. DELANY:

Q On Saturday when you left home what was the condition of the bed clothing? A Presentable.

Q What do you mean by that? Clean? A Clean.

Q Well, use plain language. Clean? A Yes.

Q You returned on Sunday? A Yes, sir.

Q Did you, after your return, observe the bed linen?

A I did.

Q Now, please describe to the jury in plain language just what the condition of the bed linen was.

MR. EVANS: And to that we object.

THE COURT: Objection overruled.

MR. EVANS: And we except.

A The condition was unmentionable.

BY MR. DELANY:

Q Well, that will never do, Mrs. Bushnell.

A Well, it was filthy, soiled.

MR. EVANS: Well, I move to strike it out.

MR. DELANY: I consent to the striking out of the first answer.

THE COURT: Yes, strike out the first answer. The

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last answer may stand.

BY MR. DELANY:

Q Now, what were the soiled spots or stains on the bed clothing? Just tell what they were.

MR. EVANS: Objected to. It has not been shown that she knows.

MR. DELANY: If she doesn't know, she can say so.

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

THE COURT: Objection overruled.

MR. EVANS: Exception.

A The sheets were thrown over the back of a chair, and as I stepped in, I said, "Why, what is this?"

MR. EVANS: Why, we object to this answer and move to strike it out. She doesn't say who she said it to or anything of the kind.

BY THE COURT:

Q Who did you say that to? A To my husband's cousin, with whom I had gone to Richmond Hill.

Q Was your husband present? A No, sir.

THE COURT: Then do not say what was said at that time. Strike that out.

BY MR. DELANY:

Q Just state what you saw, the character of the stains. Just tell what it was that stained the bed clothing, if you know

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A It was a yellow stain, and it looked as though it had been sponged out.

MR. EVANS: Objected to. I object to what it looked like.

THE COURT: Yes, objection sustained.

BY MR. DELANY:

Q Just tell the name, please, of any substance, if you can give it a name, which stained the bed clothing.

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

She has not stated that the bed clothing was stained. She said that it was filthy.

MR. DELANY: She said that it was soiled and filthy.

However, I will substitute "soiled" for "stained."

(The question is amended and repeated.)

MR. EVANS: I object, and I submit that it is not in proper form, even with the amendment.

THE COURT: I will allow the question.

MR. EVANS: And we except.

A It is a word that I have never spoken.

BY MR. DELANY:

Q Well, I am sure that if I attempt to put it into your mouth it will be said that I am leading you. Now, please tell whatever you have to say.

MR. EVANS: If your Honor please, before this witness can testify in regard to this matter, mustn't it

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be shown that she knows what the stains were?

Otherwise it is a mere assumption or a guess on her part.

THE COURT: You will have an opportunity to cross examine her. I will allow it.

MR. EVANS: But, if your Honor please, I don't want evidence which is inadmissible to get before the jury.

THE COURT: I think it is admissible at this time. I will give you an exception, Mr. Evans.

MR. EVANS: I know, if your Honor please, but I appeal to your Honor as a matter of fairness. Mustn't it be proven---mustn't she be asked, "Do you know what that stain was?" and then tell what it was if she does know?

THE COURT: I will allow the question.

MR. EVANS: And we except.

BY MR. DELANY:

Q How many different kinds of stains, if there were different kinds of stains were there upon the bed?

MR. EVANS: I object, if your Honor please, because she has not testified that there were any stains upon the bed.

THE COURT: I will allow the question.

MR. EVANS: And we except.

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BY MR. DELANY:

Q How many different kinds of stains, if there were different kinds of stains, were there upon the bed? A Pardon me. Do you mean the color?

Q If there is any way by which you can differentiate them you can use your own language. A There was but one kind of stain.

MR. EVANS: Well, I object to the District Attorney giving any such instruction to the witness.

THE COURT: Objection overruled. She has answered.

What was the answer, Mr. Stenographer?

(The answer is repeated by the stenographer.)

BY MR. DELANY:

Q Now, please tell us what the stain was if you can.

A The stain had been sucked up to a certain extent.

MR. EVANS: Now, I move, if your Honor please, to strike that out, that the stains had been sucked up to a certain extent. How is it possible for the witness to know that?

THE COURT: Strike that out.

BY MR. DELANY:

Q What substance did you observe staining those bed spreads or sheets or whatever the bedclothing was?

MR. EVANS: Objected to, on the ground that she has

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not said that she saw any substance staining the bed sheets.

THE COURT: Objection overruled.

MR. EVANS: And we except.

Q What substance did you observe staining those bed spreads or sheets or whatever the bed clothing was?

A (No answer.)

MR. EVANS: Is there any answer, Mr. Stenographer?

THE STENOGRAPHER. None.

THE WITNESS: I don't know how to answer the question.

MR. DELANY: Well, if you don't, I will not insist upon your answering it.

MR. EVANS: Is that all?

MR. DELANY: Yes. If the witness will not answer, I will not insist upon it any further.

C r o s s E x a m i n a t i o n :

BY MR. EVANS:

Q Now, this is your husband, is it not (indicating the defendant)? A By law, yes.

Q What do you mean by that? Isn't he your husband in fact as well as in law? A (No answer.)

Q Did you hear my question, madam? A Yes.

Q Well, will you answer it, please. A (No answer.)

Q You decline to answer. Well, do you know Mr. Cole?

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A I do.

Q Do you remember the time your husband charged you with being in bed with Mr. Cole? A No, sir.

Q You don't remember that? A No.

Q When did you see Mr. Cole last? A He just left the witness room.

Q Did you see him yesterday? A Yes.

Q How long were you in his company? A Here in the court room.

Q When did you see him before that? A The last day I was in the witness room.

Q Yes. And between the seventeenth day of March, 1900, and the twelfth day of December, 1900, how often did you see him? A What were the dates?

Q How often did you see him? A What were the dates?

Q Between the seventeenth day of March and the twelfth day of December how often did you see him? A I can't say. I haven't given it a thought.

Q No. Fifty times? A No, sir.

Q You were present down in Mr. Comstock's office, weren't you, when he made the affidavit in this case? A Yes.

Q You asked him to go down there, didn't you? A Yes.

Q You saw him the day before and asked him to go to make the affidavit against your husband; is that right? A Yes.

Q Eh? A Yes.

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Q Are you sure of that? A Yes.

Q And did you tell him that you would meet him at Mr. Comstock's office? A I did.

Q And did you tell him ^{at} what time you would meet him?

A Yes.

Q And it was at your solicitation that he went there and swore to this affidavit in this case? You don't live with your husband, do you? A No, sir.

Q How long is it since you have been living with him?

A He went to the hospital on the fifth of April----

Q One moment. How long is it since you have been living with him? A I haven't lived with him since he went to the hospital the fifth of April, a year ago.

Q You haven't lived with him since he went to the hospital the fifth of April a year ago? A Yes.

Q Where have you been living? A I have been living at home and in New York.

Q Where is your home? A Chicago. Or in Lombard, a suburb of Chicago.

Q Who do you live with in Chicago? A My mother.

Q And who do you live with here? A I have been living with Mr. Bushnell's aunt.

Q Yes. Up until what time? A I lived there until the tenth of January.

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Q Of this year? A Yes.

Q And you haven't been back since, have you? A Only to call.

Q Only to call? A Only to call.

Q When you saw Mr. Cole the day before he went down to Mr. Comstock's office to swear to this affidavit, where did you see him? A I saw him in New Milford, Connecticut.

Q Did you go up there to see him? A I did.

Q And you asked him to come down and swear to this affidavit?

A I asked him to go down and see Mr. Comstock.

Q Yes. And you had been to see Mr. Comstock before?

A Yes.

Q And then you were the instigator of this charge against this defendant, your own husband; is that true?

A If you please.

Q Yes? A Yes.

Q And you want to get rid of him, don't you?

A He turned me out of doors.

Q What? A He turned me out of doors.

Q He turned you out of doors? A Yes.

Q Yes. And consequently you want to get rid of him. You don't feel very kindly toward him, do you? A I have nothing--I have no revenge.

Q No revenge at all? A No.

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Q And you didn't feel a bit revengeful when you went up to New Milford and got Mr. Cole and asked him to come down to Mr. Comstock's office and swear to an affidavit; you didn't feel revengeful at all then? A No, sir.

Q Then why did you do it? A (No answer.)

Q Eh? A Because I wanted to stop this worse than murder,

Q Oh. That was the reason, was it? A Yes.

Q You didn't think at the time that he had turned you out of doors, did you? A He turned me out so many times.

Q Well, you didn't think of that when you went up to Milford to get Mr. Cole to come down, you didn't think of that at all? A Revenge?

Q Yes. A No.

Q But it was simply because you had a duty to perform?

A Yes.

Q And you felt that it was your duty to do this? A Yes.

Q And that is the only reason that you are doing it?

A Yes.

Q It was not because of your husband finding you and Mr. Cole together in the room? A He never found us together in the room.

Q And that wasn't the reason he turned you out? A No.

Q It was not? A No. It was because I refused to pay his bills.

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Q Out of your private estate? A Yes.

Q Oh, I see. A Yes.

R e - D i r e c t E x a m i n a t i o n :

BY MR. DELANY:

Q Mrs. Bushnell, did you ever hear of a boy named Stromberg?

A Yes.

Q How old was that boy about? A About seventeen when I saw him.

Q Did he live with you in your---- A No, sir. He visited, the week between the holidays.

Q Who was Stromberg? A A friend of my husband's.

Q Well, what was his occupation or--- A He was attending school at that time.

Q Where? A At Holderness, New Hampshire, I think.

Q What kind of a school was it? A I can't say.

Q Had you known him before he came visiting there? A No, sir.

Q Now, did your husband ever charge you with---ever find you in the room with Stromberg or ever charge you with having been in Stromberg's room? A No, sir.

MR. DELANY: I only give the lady a chance to deny it before those who heard the question asked.

MR. EVANS: Oh, of course she will deny it.

BY MR. DELANY:

Q Did you have any difficulty about Stromberg with your hus-

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band during the time that he was there? A In what way?

Q Did you and your husband have any misunderstanding?

A No, sir.

Q About the boy Stromberg while he was in the house?

A No, sir.

Q Was he there oftener than the once? A He was there during the holiday week. He slept there.

Q But you and your husband never had any trouble on account of him? A No, sir.

Q Did you ever have any trouble with your husband on account of any of the visitors that came to the house? A No, sir.

Q Were there many visitors coming there? A Not to see me.

Q No. To see your husband? A Yes.

Q All male visitors? A No, not all. I had a few lady friends. His cousins, two of his cousins, called.

Q And they came to visit you? A Yes.

Q But you never had any trouble with your husband growing out of the presence of other men or boys in the house?

A No, sir.

R e - C r o s s E x a m i n a t i o n :

B Y M R . E V A N S :

Q Just a question----

T H E C O U R T : Oh, we have had enough on this subject.

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MR. EVANS: But it is very important, if your Honor please.

BY MR. EVANS:

Q When you noticed the sheets there, it was on Sunday afternoon, was it not? A Yes.

Q When you came home from Richmond Hill? A Yes.

Q And your husband was home? A No, sir.

Q Didn't he come home that afternoon? A He came home between six and seven o'clock.

Q And how long was he home? A He stayed home all the evening.

Q Yes. Did you say anything to him about it? A Yes, sir. And he said that he had been ill in the night.

Q You mentioned something to him about it, did you?

A Certainly I did.

Q And did you say anything to Mr. Cole about it?

A No, sir.

Q Did you have any conversation with Mr. Cole in regard to the matter at all? A No, sir; not at that time.

Q At any other time? A Yes, sir; since I have.

Q When? A I couldn't tell you the date.

Q Eh? A I couldn't tell you the date.

Q How long afterwards? A Months.

Q Months afterwards? A Yes, sir.

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Q And it was not until after months afterwards? A I didn't see Mr. Cole from the time he left the apartment until December of this year.

Q Yes. Did he leave the apartment? A Yes.

Q When? A I can't give you the date. Some time in March.

Q He was there the next day, wasn't he? A Yes.

Q And didn't Mr. Cole speak to you about it the next day?

A No.

Q Sure about that? A I don't remember it.

Q Are you sure that he didn't speak to you about it the next morning? A I won't be sure, but I don't remember it.

Q Well, but you are confident that you didn't have any conversation with Mr. Cole about it for months? A I didn't see Mr. Cole after he left our apartment.

Q I know, but how soon after this occurrence, when you say you found this on the sheets, how soon after it did Mr. Cole leave your apartment? A I don't remember.

Q Was it a week? A I can't say.

Q Was it a day? A I can't say.

Q Before he left the apartment did he make any statement to you in regard to it? A I don't remember.

Q You don't remember? A I don't.

Q Well, wouldn't you be apt to remember a matter of that kind if it occurred? A I think I could, if I should try

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to.

Q Yes. Well, wont you try for us and see if you can't remom-
ber whether or not he spoke to you about it? A I don't
remember Mr. Cole's speaking of it before he left the
apartment.

Q And you are satisfied that, if he had spoken to you about
it, you would have remembered it, is that it? A I didn't
say so.

Q You didn't say so? A No, sir.

Q Have you ever made application for a divorce from your
husband? A No, sir.

Q You haven't? A No, sir.

Q And you live in Chicago? A I am a citizen of New York.

A N T H O N Y C O M S T O C K, a witness called on behalf
of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n:

BY MR. DELANY:

Q Mr. Comstock, what position do you hold? A I am the
Secretary and Chief Special Agent of the New York Society
for the Suppression of Vice. I am also an Inspector of
the Post Office Department of the United States.

Q Do you know the defendant, George W. Bushnell? A I do.

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Q And how long have you known him? A Since August, 1900.

Q Since August, 1900? A Yes, sir.

Q It was you who made the complaint on which his arrest was made? A Yes.

Q In this case? A Yes.

Q And it was upon information that you gathered in your----

MR. EVANS: One moment. I object to the form of the question. Let him testify himself.

THE COURT: Yes.

BY MR. DELANY:

Q When your attention was first called to this case, the case of the defemiant, what did you do? A I visited several persons, and then I had an interview with the defendant.

Q Yes. Well now, how was the interview with the defendant brought about? A I wrote to him asking him to call at my office.

Q And he came there? A Yes.

Q And you had a conversation with him? A I did, sir.

Q Will you please tell us on what date that conversation took place. A^v August second, 1900.

Q August second, 1900? A Yes, sir.

Q And was he alone? A He entered my presence---my office---alone, sir.

Q And were you alone at the time? A No, sir; my steno-

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grapher was present.

Q And an interview ensued? A Yes.

Q Between you? A Yes.

Q Of how long a duration? A I should think nearly half an hour that he was in the office.

Q Now, did you make any accusation against him at that time?

MR. EVANS: I object, if your Honor please.

THE COURT: Objection sustained.

BY MR. DELANY:

Q At the time that the defendant came into your office did you have any conversation with him in reference to the offense with which he is charged in this indictment?

A I did.

Q Will you please state to his Honor and the jury what that conversation was.

MR. EVANS: I object, if your Honor please.

THE COURT: Objection overruled.

MR. EVANS: Will your Honor allow me to state the reasons and the grounds of the objection?

THE COURT: Certainly.

MR. EVANS: The witness testifies, if your Honor please, that he wrote to this man and that this man came to his office, at his own---at the witness' solicitation.

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THE COURT: Yes.

MR. EVANS: There is no evidence, nothing to show, that the defendant knew why he came there, knew why this conversation took place as between Mr. Comstock and himself, or was apprised in regard to his rights, or told that the evidence or any statement that he might make at that time would be used against him.

THE COURT: Objection overruled.

MR. EVANS: Exception. And on the further ground that it is immaterial and irrelevant.

THE COURT: The same ruling.

MR. EVANS: Exception. And on the ground that the charge contained in the indictment is that this offense was committed on the seventeenth day of March, and that it is too remote.

THE COURT: Objection overruled.

MR. EVANS: Exception.

THE COURT: Proceed.

A As he entered the room-----

BY MR. DELANY:

Q Can you give us the exact language? A I can't give you the exact language, I can give you very near the language, and I can give you the substance of the----

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Q Did you commit to writing or cause to be committed to writing the conversation which ensued between you and the defendant on this occasion? A My stenographer took it down, sir, by my direction. He was in the adjoining room with the door open, and he took the conversation down, and wrote it out immediately, and handed it to me, and I went over it and verified it.

Q And it was written out in the very words, the conversation that took place between you and the defendant?

MR. EVANS: Objected to. How can he testify to that?

THE COURT: Well, he says he verified it.

MR. EVANS: But the stenographer took it down.

THE COURT: Yes. And he says that he immediately verified it.

MR. EVANS: I object to it.

THE COURT: Objection overruled.

MR. EVANS: We except.

BY MR. DELANY:

Q You can, however, by referring to that memorandum give the exact conversation? A Yes, sir.

Q Will you be kind enough to do so?

MR. EVANS: I object, if your Honor please. The witness' own memory in regard to the matter has not been exhausted.

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THE COURT: One moment, Mr. Evans. The witness has testified that he can testify to all that occurred on that day, from memory, and I think that will be sufficient.

MR. DELANY: But he can give substantially what occurred, but not the exact words. I was doing justice to the defendant I thought by giving the very words.

BY MR. DELANY:

Q Well, please state the conversation that occurred between you and the defendant on that day. A As he entered my room he said, "Mr. Bushnell." I said, "Is this Mr. George W. Bushnell?" and he said, "Yes," and I said, "A matter has been referred to this society in reference to your conduct with young men and the assaults that you have been making on young men."

MR. EVANS: I object to that and I move to strike it out. The question was as to whether or not this man had any conversation with this defendant in regard to this particular accusation.

THE COURT: Objection overruled.

MR. EVANS: And this accusation alone.

THE COURT: Objection overruled.

MR. EVANS: And we except.

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A (continued) I said, "I have made a very careful investigation to get at the facts. I have examined one of your victims."

MR. EVANS: One moment. I object further, if your Honor please. Is this relevant and is this material?

THE COURT: Yes.

MR. EVANS: In regard to what Mr. Comstock might have found out?

THE COURT: Well, this is a conversation between the defendant and the witness, a conversation between the two. I will allow it.

MR. EVANS: We except.

A (continued) I said, "I have seen one of your victims and have his statement. He is ready to swear to it." And I said, "I want to say to you that there is one of two things that you have got to do. You have either got to give up your mission work in this city or else you have got to stop your assaults upon young men." He said, "What do you mean?" I said, "I have the names of young men whom you have assaulted."

And I said, "You have been guilty of the crime of sodomy. You have been bringing young men to your office from the missions and you have been having them together

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one at a time, and then you have gone to their beds and slept with them at night." I said, "One of the-----" he said, "My wife has turned against me," and I said, "Your wife came to this office with statements concerning your assaults upon young men and asked me to take steps to prevent you destroying these young men."

I said, "I have made an investigation and I am satisfied of the truth of the facts." I said, "In one instance you had a young man in your rooms when your wife was away," and I said, "When she came back in the morning she found the bed all covered with filthy matter where you had assaulted this young man."

He said, "If you refer to the young man who rooms here Mr. Cole," he said, "he came and got into my bed but I told him to get out." I said, "I have seen one of your victims who has just had an operation performed because-----"

MR. EVANS: Now, we have the same objection to all this line of testimony.

THE COURT: Certainly. And I make the same ruling.

MR. EVANS: And we except.

A (continued) "And I have his statement and he is ready to go into court and swear to it."

I said, "I have also the name of another one of your victims who has had also to go to the hospital and have an

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operation performed because of your assaults upon him."

I said, "You have been arrested and convicted." He says, "No. I beg your pardon." I said, "You have," and he said, "In what court?" and I said, "In the Jefferson Market police court," and I said, "I have the judgment-----"

He said, "No, I never was convicted," and I said, "You were convicted and you were fined ten dollars, and I have the judgment roll of that court certifying to that fact in my possession."

He said, "Well, my wife is doing this," and I said, "Your wife is not doing this, I am making this investigation upon the statements that have been made to me by the young men whom I have talked with."

I said---he said, "My wife---" I said, "You have been guilty of traducing your wife in the most scandalous manner. You took fifteen hundred dollars of her money," and he said, "I beg your pardon," and I said, "I beg your pardon, I can prove it by your checks and the stubs of your check books," and I said, "Instead of your wife traducing you, she has been a true and loyal wife to you until the time that she discovered your gross conduct with the young men that you brought to her rooms."

And I said, "You have a reputation of being a sodomer, a moral pervert. I have had dealings with a great many

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of this character. You are to be pitied. You have got into a condition that you can't break away from, that you can't control yourself under certain circumstances."

I said, "You were arrested for the same charge in Syracuse." "Well," he says, "I'll tell you how that was. There was a man came into my room and stole my watch, and I had him arrested, and then when I got into court he made a charge against me of attempting sodomy upon him."

I said, "Before you were married and since you have been married your reputation is that of a sodomer, a moral pervert," and he said, "Before I was married, but not since I was married." He says, "Since I was married I have been a true and loyal husband to my wife."

"Well," I said, "I have only to deal with the matter of enforcing the law of this State as I find it. I have evidence that satisfies me that you have been guilty of this charge, and now I say to you that unless you stop this business absolutely it will be my duty to take criminal proceedings against you," and he said, "I will give you a pledge that I will live hereafter a strictly moral life."

BY MR. DELANY:

Q That was in what month, Mr. Comstock? A That was on the second of August, 1900. "Well," I said to him, "If I know of your assault upon another young man, I will pro-

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test---I will institute proceedings against you."

Q And you did institute proceedings against him in December?

A I did, sir.

Q And he was forewarned in August? A Yes, sir; in August.

Q And that accounts for the fact that after receiving the information you did not proceed against him? A I didn't proceed against him at that time. I had a subsequent conversation.

Q Well, never mind about that, but I mean you didn't proceed against him in August because you had promised him that if he would mend his ways you would bring no accusation against him at all? A Well, my conversation with him was to lead him back to a better life, sir, and I had no thought at that time, sir, of instituting criminal proceedings against him, but rather to warn him, and I set the facts plainly before him in order to warn him to a different course. There was a subsequent conversation.

Q Now, did you have a subsequent conversation with him?

A Yes.

Q When was that? A On the fourteenth day of December.

Q How was the subsequent conversation brought about?

A I went with Officer Feeney to his apartments, 310 East Nineteenth Street, to arrest him. When I went in I said to him, "Mr. Bushnell, you remember when you were in

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my office?"

MR. EVANS: If your Honor please, I object.

A (continued) "I warned you---"

MR. EVANS: Objected to.

THE COURT: When was this?

MR. EVANS: At the time he went there for the purpose of arresting the man.

MR. DELANY: He went there with an officer to execute the warrant for the defendant's arrest.

MR. EVANS: Without any knowledge on the part of the defendant that he had a warrant, and he was not apprised of his rights or anything of the kind.

MR. DELANY: He has not said what took place yet. He said that he came into the room.

BY THE COURT:

Q Well, did you state to him at the time that you had a warrant? A During the conversation I stated it.

Q No. But before you started the conversation? A No, sir.

THE COURT: Well then, the objection is sustained.

You may state anything that you said to the defendant after you had apprised him of the fact that there was a warrant against him.

THE WITNESS: I went over the same conversation with

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him after the warrant was issued, after I introduced him to the officer. I said, "The officer has a warrant for your arrest," and after making that announcement to him, he said this was very hard, and I said, "No, it isn't."

MR. EVANS: Objected to. I object to it, as the witness himself has said that the conversation took place before he apprised him of the warrant.

THE COURT: No, he said that there was some conversation after the announcement of the warrant.

MR. DELANY: He said that he introduced the officer to the defendant and told him that the officer had a warrant.

THE COURT: Yes. I will allow any conversation that took place between the witness and the defendant, after the witness informed him, the defendant, of the fact that there was a warrant for his arrest.

MR. EVANS: I understand your Honor's ruling, but will your Honor hear me a moment?

THE COURT: Yes.

MR. EVANS: Your Honor's ruling was that after the warrant was mentioned to the defendant you would allow any conversation, but not before. Wont your Honor ask him whether it was before or after the warrant was made known to the defendant?

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THE COURT: He has just said that it was after he had introduced the officer.

BY THE COURT:

Q Did you not so state? A Yes, sir.

Q When you introduced the officer to him did you state that he was an officer with a warrant? A I said, "This is Officer Feeney, who has a warrant for your arrest."

THE COURT: Now then, proceed.

A (continued) He said that it was very hard, and I said, "No, it isn't. In August last when you were in my office I gave you full warning that if I ever knew of your making an assault on another young man I would prosecute you. I said to you then, Go and sine no more, and that I would befriend you. Instead of that, on Election Day You sent a letter to a young man named Charles Walters, inviting him over here to these apartments. He came here on Sunday afternoon and you assaulted him," and I said, "When that fact came to me, I made my promise good, that if I knew of your making an assault of this character upon another young man, that I would take legal proceedings to stop you from doing it."

Cross Examination:

BY MR. EVANS:

Q Mr. Comstock, you are the Secretary of your Society, aren't

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you? A Yes, I am.

Q And is it an incorporated society? A It is a chartered society, chartered by the Legislature of the State, by a special act of the Legislature.

Q Who is the President of that Society? A Mr. Welcome G. Hitchcock.

Q And you have been the managing director of that society for a long period of time? A I am not a director at all, sir. I am not on the Board of Managers. I am the Secretary and Chief Special Agent and not a member of the Board of Managers.

Q Well, the concern has been practically under your management for a long period of time? You are the Society really, as matter of fact? A I am not, sir. I am simply an agent obeying orders.

Q Well, how many directors are there of that society?

A There are thirteen.

Q Thirteen? A Yes, sir.

Q Well, when a matter of this kind comes up you don't consult the directors about it? You have the authority to make the investigation and do as you think best about it yourself? A On the contrary, sir, I do consult the Board of Directors, and I make a written report once every month to the Executive Committee.

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Q Yes, I understand that, but I mean to say that, if anybody wants to bring a charge of this character or wants to suppress any vice, the person they go to see is you?

A Sometimes and sometimes the president.

Q Well, generally speaking? A Well, I am the only one that is there in the office, Mr. Evans, and they would naturally come to me.

Q And then practically you and the Society are one and the same thing? It is so understood generally, is it not?

A No, sir; I don't want to be misunderstood. I am simply the Agent of the Society, taking my instructions from the Board of Managers.

Q You understand what I mean, don't you, Mr. Comstock? It is called the Comstock Society, is it not? A It is frequently called that, just as the Berg Society is called the Berg Society.

Q Well, because you run the Society or people think you do?

A Well, I think that is hardly fair.

Q Well, I don't mean to be unfair.

THE COURT: Well, why, Mr. Evans, waste all this time?

MR. EVANS: Because I want to find out about these charges, if your Honor please. I don't think I ought to be stopped in my cross examination.

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THE COURT: I do not want to stop you. I only want to save time. Proceed, Mr. Evans.

BY MR. EVANS:

Q Now, Mr. Comstock, who first saw you in regard to this charge? A I think Mrs. Bushnell gave me the first--- that Mrs. Bushnell gave me the first information that things were going wrong.

THE COURT: Now, we are within five minutes of the usual recess hour, and this cross examination will probably take some time?

MR. EVANS: Yes, it will.

THE COURT: Then the court will now take a recess for one hour.

(The Court then admonished the jury in accordance with section 415 of the Code of Criminal Procedure, and took a recess for one hour.)

A F T E R R E C E S S .

A N T H O N Y C O M S T O C K, his cross examination being continued, testified as follows:

C r o s s E x a m i n a t i o n c o n t i n u e d :

BY MR. EVANS:

Q You stated, Mr. Comstock, or I understood you to say that you had a conversation with this defendant on the second

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of August? A Yes, sir.

Q That he came to your office in answer to a letter that you had written him? A Yes.

Q And the first thing that you knew about the matter, the first information that was given to you about the matter was given to you by this defendant's wife, was it not?

A Yes.

Q And that letter was written in consequence of the information that was given to you by the defendant's wife?

A Not altogether, no, sir.

Q The defendant's wife came to your Society rooms and spoke to you with regard to her husband? A Yes.

Q That was the first knowledge that you had in regard to the case? A Yes.

Q When he came there and you had the conversation with him you didn't go out and have a warrant issued for his arrest?

A I did not.

Q Had you seen Mr. Cole at that time? A Yes.

Q Was Mr. Cole here in the State? A I beg your pardon, sir?

Q Was Mr. Cole here in the State? A Yes.

Q The affidavit which was made by this defendant was made on the twelfth of December? A I have not seen any affidavit made by this defendant.

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Q I mean the affidavit made by Cole, was made on the twelfth of December? A I don't know exactly. Without examining the record I couldn't say the date.

MR. DELANY: That is true. That is the date.

THE WITNESS: Very well then, sir. That is the date.

BY MR. EVANS:

Q And Mr. Cole was at your office on that day? A Yes, sir.

Q And that complaint was made at your office? A Yes.

Q And Mrs. Bushnell was there? A I don't think she was. I don't think she was there when I made the affidavits.

Q Do you remember distinctly as to whether she was there or not? A I do not. It is possible that she was there, but I think not, sir.

Q Mrs. Bushnell brought Cole to your office, didn't she?

A That I don't recall, it is possible.

Q You know that Mrs. Bushnell brought Cole from Connecticut, don't you, went up there and brought him down, don't you?

A Mrs. Bushnell told me afterwards that she had seen Mr. Cole at New Milford, Connecticut.

Q Yes. And it was through Mrs. Bushnell that Cole came down from Connecticut and swore to the affidavit? That is true, is it not, practically? A Well, I don't know. I requested Mrs. Bushnell to see Mr. Cole and see whether he would be willing to make the affidavit, and an affidavit----

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Q And after that she went up to Connecticut and saw him?

A Well, I suppose she did, I don't know.

Q And within a day or two Cole came in? A Yes.

R e - D i r e c t E x a m i n a t i o n :

BY MR. DEFLANY:

Q Mr. Comstock, it was not solely---or was it solely on account of the information that had been conveyed to you by Mrs. Bushnell that you sent the letter notifying the defendant to call at your office? A No, sir; it was not; as I testified, it was not.

Q When you went to the house or the residence of the defendant on the morning of the arrest did you have any conversation with him before you told him that you were there with the officer for the purpose of executing a warrant?

MR. EVANS: One moment. I object, if your Honor please

It has been all gone into in the direct examination.

THE COURT: Yes. Objection sustained.

MR. DEFLANY: Well, if your Honor please, I would like to show that, when they first went there---something that I didn't know originally----

MR. EVANS: I object to any statement as to what he would like to show. Your Honor has sustained the objection.

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THE COURT: Yes. Put your question, Mr. Delany.

BY MR. DELANY:

Q Did you represent the person who was with you when you first went into the room as a police officer? A No, sir.

Q You represented him to be another person? A I said, "Mr. Walters."

Q "Mr. Walters"? A Yes, sir.

Q But the officer who accompanied you was not Mr. Walters?

A He was not, sir.

Q And you had a conversation then with the defendant before you apprised him of the fact that the person who accompanied you was a police officer?

MR. EVANS: One moment. I object, if your Honor please, on the same ground.

THE COURT: Oh, I will allow him to testify that he had a conversation.

MR. EVANS: We except, sir.

BY MR. DELANY:

Q Now, when you introduced your companion as Mr. Walters, did the three of you then indulge in any conversation, that is to say, the defendant Mr. Walters and yourself?

A Yes.

Q Now, what was said at that time?

MR. EVANS: I object, if your Honor please.

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THE COURT: Objection sustained.

MR. DELANY: If your Honor please, I would like to recall Mrs. Bushnell.

THE COURT: Yes. Is Mr. Comstock to be recalled?

MR. DELANY: I think not, sir.

THE COURT: Then he may remain in the court room.

MAY ALBY BUSHNELL, being recalled by the District Attorney, testified as follows:

Direct Examination:

BY MR. DELANY:

Q Mrs. Bushnell, do you know what the stain or soil on the bed linen on the night in question was?

MR. EVANS: I object, if your Honor please. The matter has been all gone into on the direct examination, and the witness left the stand, and recess has occurred in the meantime, and I submit, if your Honor please, that it is hardly fair.

MR. DELANY: I have had no interview, and no one representing me has had any interview with the witness.

THE COURT: I will allow the question.

MR. DELANY: She simply left the stand without answering.

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MR. EVANS: We except.

BY MR. DELANY:

Q Mrs. Bushnell, do you know what the stain or soil on the bed linen on the night in question was? A Semen.

Cross Examination: None.

M A R Y R I E L L Y, a witness called on behalf of the People, being duly sworn, testified as follows:

D i r e c t E x a m i n a t i o n :

BY MR. DELANY:

Q Are you a married woman? A Yes.

Q What is your business, Mrs. Rielly? A I live out.

Q You live out? A Yes.

Q That is you do housework? A Yes, sir.

Q In the month of March, 1900, were you doing house work for other people? A Yes, sir; for Mr. Foster, a lawyer.

Q What? A For Mr. Foster, a lawyer.

Q Where is that? A 438 Lexington Avenue.

Q Did you have any business or any occasion to be about the premises that were occupied by Mr. Bushnell and his wife at that time? A Yes, sir.

Q What brought you there? A I had business through the hall, and Mrs. Bushnell called on me.

Q When was that, do you remember? A I should think it was

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the second Sunday in March or the first. I am not sure.
That I can't say.

Q Do you know what time in the day it was that she called you?

A Yes, sir; I do.

Q About what time? A Five o'clock, or a quarter past.

Q What was it she called your attention to? A To look---

MR. EVANS: I object, if your Honor please.

THE COURT: I will allow it.

MR. EVANS: We except. Mrs. Bushnell, in the absence
of this defendant, had a conversation with this
woman. Do you allow that?

THE COURT: No. I understand it is no conversation.

MR. EVANS: Well, what she called her attention to.

THE COURT: Yes, I will allow that.

MR. EVANS: We take an exception.

A (continued) To look at some sheets.

BY MR. DELANY:

Q Where were they, those sheets? A In Mrs. Bushnell's
room.

Q Was your attention called to anything in particular about
the sheets? A Yes.

Q Well, what was it that your attention was called to?

A She said----

MR. EVANS: Objected to, if your Honor please.

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THE COURT: Yes. Do not state what she said.

MR. DELANY: Don't state anything that she said.

THE COURT: You may simply state what you saw.

A (continued) Well, I looked at those sheets---I wasn't in the room, I was in the hall---and the sheets looked as if they had washed out spots in them.

BY MR. DELANY:

Q Yes. Did you examine the sheets? A No, sir; I didn't, I didn't step into the room at all.

Q When you say that the sheets had spots--- A As if they were wet and gathered up in your hand in that way (illustrating.)

C r o s s E x a m i n a t i o n :

BY MR. EVANS:

Q You were merely out in the hall? A Yes, sir.

R e - D i r e c t E x a m i n a t i o n :

BY MR. DELANY:

Q And you remember that on that Sunday, Mrs. Bushnell had been away, do you? A Yes, sir; she was in Richmond Hill.

MR. DELANY: If your Honor please, that is the case for the People.

THE COURT: The People rest, Mr. Evans.

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MR. EVANS: The defendant moves the Court to direct the jury to acquit upon the ground:

First---that the People have failed to make out their case.

Second---upon the ground that under the section of the Code under which this defendant is indicted, section 303 I think it is---

THE COURT: Yes.

MR. EVANS: Under section 303 the complaining witness is made an accomplice, he being equally as guilty as the defendant, and under section 399 of the Code of Criminal Procedure the testimony of an accomplice must be corroborated.

And upon those grounds we move your Honor to direct the jury to acquit.

THE COURT: What does the District Attorney say as to the last point?

MR. DELANY: Well, if your Honor please, I believe that the case is corroborated in this particular: The defendant in his testimony or in his conversation with Mr. Constock, when he was accused of the crime, said that he did not entice this young man into his bed, but that the young man came himself into the bed, but he is silent in the face of the

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accusation as to whether the act of sodomy complained of occurred.

Now, that is some corroboration or a corroborating circumstance, a circumstance that would tend, in the language of the Code, to connect the defendant with the commission of the crime charged.

He admits that he was in bed with this complaining witness, and he had no business to be there. But he says that instead of enticing him to his bed, the complaining witness himself came there. But he is silent on the question of whether the crime was committed or not.

On another subject it might be said that he had impliedly denied that accusation, but if you will examine that, you will find that Mr. Comstock accused him of having been addicted to sodomy and having had that reputation, to which he made answer that he had such a reputation before he was married but not since, because he had been loyal to his wife.

That might be construed, as your Honor I think will see, into a denial of the fact that his reputation had changed after his marriage, in that he did not have the reputation of being ad-

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dicted to these offenses.

So that, so far as the question is concerned, there is sufficient to connect the defendant with the crime, in that this man Cole and he were in the same bed that night, and he does not positively disaffirm the truth of the statement that the act of sodomy was committed there.

There is further corroboration made by the wife of the defendant, that when she returned she found stains upon the bed clothes, which she said were semen, and we find that the testimony of Cole was to the effect that the semen from the person of the defendant had been ejaculated in this attempted act of sodomy or in this act of sodomy, over the bed clothing, and had stained them.

And Mary Reilly comes in to say that there were similar stains on the bed sheets when Mrs. Bushnell returned, and so far as the bed sheets are concerned there was no other occupant in the house except the two men who have been mentioned, Cole and the defendant, until Mrs. Bushnell returned.

And Mrs. Reilly said that they looked like

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washed-out spots, spots that had been stiffened and as if an attempt had been made to rub them out. Now, in view of the fact that Mrs. Bushnell testifies that the sheets were clean when she went away, and of the testimony of Mary Reilly that the sheets were soiled in this way, and in view of the testimony of Mrs. Bushnell that there was semen on that bed, and in view of the failure of the defendant to specifically deny that the act of sodomy was committed on that night, I claim that all the requirements of the law have been complied with.

THE COURT: I will submit the question of corroboration to the jury.

MR. EVANS: Your Honor denies my motion?

THE COURT: Yes.

MR. EVANS: We except. The defendant rests. We will submit this case to the jury, if your Honor please, upon your charge.

MR. DELANY: If your Honor please, I prefer to sum up the case before the jury. It is too important.

THE COURT: Sum up, gentlemen.

(The case was then summed up on both sides.)

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THE COURT'S CHARGE.

Gentlemen of the Jury, the defendant at the bar is charged by this indictment with the crime of sodomy, or, as it is known in our law books, a crime against nature. This crime has been defined so often during the trial of this case that I do not propose to read again to you the section of the code referring to it.

The questions to be determined by you in this case are:

First---Did this defendant have unnatural connection with the complaining witness Cole on the seventeenth day of March or in the month of March, 1900?

Secondly---Was the act on the part of the complaining witness a voluntary submission?

If it was a voluntary submission, then before the prosecution can ask for a conviction in this case, they must corroborate the complaining witness.

If it was not a voluntary act on his part, but was an act that he was forced to submit to, then there need not be any corroboration.

You will notice the distinction, gentlemen

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of the jury.

If you determine from all the facts and circumstances in this case that the act charged was committed by the defendant in the month of March, 1900, and that it was a voluntary submission on the part of the complaining witness, then there must be corroboration.

By corroboration, gentlemen of the jury, we do not mean that the complaining witness must be corroborated in every detail of his testimony. If he is corroborated in any material fact that will connect the defendant with the commission of the crime, that is the corroboration meant under our law.

So, if any fact or circumstance in this case connecting this defendant with the commission of the crime charged, has been proven to your satisfaction, independent of the testimony of the complaining witness Cole, that is sufficient corroboration.

But, if you believe from all the facts and circumstances in this case, that the crime charged was committed by the defendant in the month of March, 1900, against the will of Cole and without

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submission on his part, there need be no corroboration.

In either aspect of the case if you believe that the defendant committed the crime charged in this indictment as a voluntary act or submission on the part of the complaining witness, and the evidence of the complaining witness is corroborated as I have already explained, then your verdict ought to be that of guilty as charged in the indictment.

Or, if you believe that it was an involuntary act on the part of the complaining witness and believe that the crime was committed by the defendant in the month of March, 1900, then your verdict ought to be that of guilty as charged in the indictment.

But if there be a reasonable doubt as to the guilt of the defendant, or if you believe that the defendant did not commit the act charged or if it was a voluntary act or submission on the part of the complaining witness Cole, and there is a failure of corroboration, then your verdict ought to be that of not guilty.

In determining this case, gentlemen of the

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jury, I want to impress upon your mind as forcibly as I know how to do, that, whatever your opinion may be as to the seriousness of the crime charged, whatever your opinion may be as to the conduct of the defendant, you must not forget that you are sworn to determine this case upon the evidence that has been admitted here, and upon that alone; and that you must determine before you can convict the defendant that the prosecution have made out their case beyond a reasonable doubt, to wit, that the crime of sodomy was committed by the defendant in the month of March, 1900.

If the People have failed to do that, your verdict ought to be that of not guilty. If they have done it your verdict ought to be that of guilty as charged in the indictment.

The fact that the defendant has not taken the stand must not weigh against him in the consideration of this case.

Prior to some years ago the defendant was not permitted to testify in his own behalf. The Legislature however, changed the law, and the law now is that a defendant may testify in his own behalf.

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The law also provides that a failure on the part of a defendant to testify in his own behalf must not weigh against him with the jury in the consideration of the case, and that the jury must be specially instructed to that effect.

Any requests or exceptions, Mr. Evans?

MR. EVANS: No, sir.

THE COURT: The jury may retire.

(The jury returned to the court room at 4.35 p.m., having been in deliberation for one hour.

The jury found the defendant guilty as charged in the indictment.)

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