

I N D E X .

Direct Cross Re Dir. Re Cr.

Walter J. Dunn

38 62 63

Thomas Carney

64 73

CASE # 1508

I N D E X.

Direct Cross Re-Dir.Re Cro.

Walter H. Voelckening	78	83		
Thomas J. Carney		92	96	98
John R. Nutter	106	113		
Owen M. Bangs	121	125		
Harry Tucker Sanderson	130	136		
Edward C. Sweitzer	138	140		
Fred. W. Richert	147	149	150	
Charles Devlin	150			
George H. Muller	164	179	186	
George C. Weikly	191	204	217	

CASE # 1508

1508

INDEX .

	<u>Direct Cross Re-Dir. Re Cr.</u>			
George Weikly	222	223	225	225
George Muller	228			
James N. Weikly	229			
Charles D. Bernstein	240	259		
James N. Weikly (recalled)	276 358	295 359		
Louise Weikly	297			
Thomas A. Weiss	300	304	313	
William B. Kelly (recalled)	314 340	318 347	326	
William J. Keates	327	333		
John A. Kelly	350	354		
Eugene Mahoney	360	369		
Frank W. Nighman	370			

CASE # 1508

INDEX.

WITNESSES.	DIR.	CR.	RE-DIR	RE-CR
Charles W. Hood,	374-			
George W. Decker,	376-			
Francis P. Boland,	378-	380-		
James H. Schumway,	380-	382-		
John A. Hanna,	388-			
Walter J. Dunn,	391-			
Harold L. Coe,	404-	408-		
Charles C. Clifton,	411-	423		
Thomas J. Carney	428			
Isaac Clark	430			
John Hannan	433			
Frank Wilson	439			
Frederick Waads	443			
Isaac Clark	446	447		
Henry Taylor	448			
Harry Tucker Sanderson	451	453		
James R. Thompson	453	454	454	
Robert Black	455	457		
John G. Sustman	457			
Owen M. Langs	459	462		
Robert Black	463			
Isaac Clark	465	466		
Clarence Francis	466			
George Weikly	468			

CASE #1508

Don - British as the person is

6750

WES

7.45 - Looked through hole
10 minutes - 17 - 21

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Don't see anything
Don't see anything
2 1/2 in 2 feet across
Don't see anything
Don't see anything
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125
126
127
128
129

Don't 468-

117

CASE #1508

COURT OF GENERAL SESSIONS OF THE PEACE.

IN AND FOR THE COUNTY OF NEW YORK.

PART TWO.

----- x
THE PEOPLE OF THE STATE OF NEW YORK : B e f o r e :

-against-

:HON. T. C. T. CRAIN, J.

GEORGE WALLIS, true name GEORGE : and a Jury.
WEIKLY.

----- x

New York, Thursday, March 14th, 1912.

THE DEFENDANT IS INDICTED FOR SODOMY.

INDICTMENT FILED AUGUST 30th, 1911.

A p p e a r a n c e s :

ROBERT C. McCORMICK, Esq., Assistant District Attorney,

For the People.

GEORGE A. McDERMOTT, Esq., and
EDWIN T. TALIAFERRO, Esq., and
C. W. FRANCIS, Esq.,

For the Defendant.

(A jury is duly impaneled and sworn.

THE PEOPLE'S CASE.

Mr. McCormick opened the case to the jury on behalf
of the People as follows:

MR. McCORMICK: May it please the Court, Mr. Fore-
man and gentlemen of the jury: The details that will be
laid before you upon the trial of this case are revolt-
ing, and, as far as possible, I will refrain from dwelling

CASE #1508

9830

upon them in the opening to you.

The law provides that a person who carnally knows any person with the mouth, with his mouth, is guilty of this crime which is known in the Penal law as the crime against nature, or sometimes spoken of ^{as} sodomy.

We will establish the fact that this defendant committed that crime, through the evidence of four reputable eye witnesses. On the 24th of August this crime was committed, in a toilet room adjoining the smoking room of the Pennsylvania Railroad Company's ferry house, at Cortland Street in this county. Adjoining the smoking room is a toilet room, and this room is about, I should say thirty feet in length, and about twenty feet in depth, and at one end of it was four toilets, and there are four compartments, and these compartments are divided by partitions that do not extend to the ceiling, only about eight feet in height, and that the ceiling, I think, is about-- well, I will refrain from mentioning the dimensions because I might be wrong-- I think about thirteen feet.

We will show you that the officials of the Pennsylvania Railroad Company learned that there had been holes cut--

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

THE COURT: Objection sustained.

CASE # 1508

MR. MCCORMICK: Between these partitions-- I might say first, that they called the door that you entered to the right booth No. 1; next to that you entered booth No. 2, 3, 4, at the end of this smoking room or toilet.

Now, the partition between booth No. 1 and booth No. 2 in that partition there was a hole cut, about two and one half feet from the floor, a hole probably three inches in diameter. On the night of the 24th of August, two men, or three, were looking through two holes cut at a point directly perpendicular-- in a line drawn perpendicularly from the floor above, or the ceiling; so as they looked down they could see what happened on both sides of this partition, and that adjoining booth No. 1 which was the end booth next to the wall of the building, that in that wall probably about eight feet over the floor there was a window; that is the lower sill of the window was about eight feet from the floor, and outside of that there was a lumber pile, upon which a man of ordinary height standing could lean his elbows on the sill of the window, and look into booth No. 1 and see what was going on there.

We will show you that when these booths were constructed the hole between booth No. 1 and booth No. 2 was not in existence but that it had been cut there by some one unknown a short time before the commission of this crime.

Three men looking through the floor or through the ceiling above, and leaning on this lumber outside of the window would be able to look into booth No. 1 and

CASE # 1508

these looking from the top could also see what happened in booth No. 2.

This defendant was seen to go into booth No. 1 and sit down on the toilet. The other man, who has been indicted, went into booth No. 2. These two men partially disrobed. The man in booth No. 2, Muller, put his penis through this hole into booth No. 1 where this defendant sat, and it was in a state of erection, and this defendant placed Muller's penis in his mouth, whereupon the man who was standing on the lumber outside and looking down to see what this defendant was doing, waved his hand, and another man who stood right by a door that led into the toilet rushed in, pulled open the door of booth No. 1 and saw this defendant with the penis of the man in booth No. 2 in his mouth. He shoved him aside, and stood-- prevented either one of these men from getting out.

In the meantime, these men above, who had seen what had happened ran out and down the stairs and joined the man who had opened the door of booth No. 1 and found this defendant in the position described, and also the man on the lumber pile outside came around and they were placed under arrest and charged with the commission of the crime of sodomy, both of them, under two separate indictments, and under this indictment, upon that evidence the People ask you to find this defendant guilty as

CASE # 1508

charged in the indictment.

Captain Dunn.

MR. TALIAFERRO: If your Honor please, I ask your Honor to exclude the witnesses.

THE COURT: Yes; all witnesses in this case except the one now being called, will step outside, and remain outside until called.

MR. TALIAFERRO: I ask your Honor to instruct the witnesses not to communicate or have any conversation with any one in regard to this case until placed upon the witness stand.

THE COURT: I don't think I will do that.

MR. TALIAFERRO: I make ~~that~~ request to your Honor.

THE COURT: I don't think I will do that, Colonel. After a witness has been on the stand and has been sworn, his examination suspended, he will be told not to talk ~~with~~ with anybody about the case. Before a witness has been actually sworn, it is the right of counsel to elicit whatever information he may have. That is your right, so far as the defense is concerned, and that is the right of the prosecution, so far as their witnesses are concerned.

MR. TALIAFERRO: I understand the object of the rule is to prevent the witnesses from knowing what has been testified to. I respectfully note an exception.

CASE # 1508

WALTER J. DUNN, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your name? A Walter J. Dunn.

Q Where do you live? A 77 West 29th Street, Bayonne, New Jersey.

MR. McCORMICK: I will excuse this witness for the present, and call the photographer.

THE COURT: You are instructed, witness, not to talk with any one about this case.

THE WITNESS: All right, sir.

ROBERT K. BETHEL, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your name? A Robert K. Bethel.

Q Where do you live? A 2471 Eighth Avenue.

Q What is your occupation? A Photographer.

Q Talk out so all these gentlemen can hear you? A Photographer.

Q And how long have you been in that business? A Ten years.

Q Did you take a photograph of the end of the toilet room in the Pennsylvania ferry adjoining the smoking room?
A I did.

CASE #1508

Q At Cortlandt Street? A Yes, sir.

Q When? A October 15th, 1911.

Q Is that a correct representation of the end of that room? A It is a correct representation.

MR. McCORMICK: I offer it in evidence.

MR. TALIAFERRO: I object to it.

MR. McCORMICK: I will have it marked for identification.

(Photograph marked People's Exhibit No. 1 for identification.)

CROSS EXAMINATION BY MR. TALIAFERRO:

Q Who are you employed by? A W. R. Harrison, of Jersey City.

Q Is he connected with the Pennsylvania Railroad? A No, sir, he is an independent photographer.

Q Who was he employed by if you know? A Who was he employed by?

Q Yes. A To make this photograph?

Q Yes. A By the Pennsylvania.

Q By the Pennsylvania Railroad? A Yes, sir.

MR. TALIAFERRO: That is all.

W A L T E R J . D U N N , being recalled, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your occupation? A Captain of police, Pennsyl-

CASE # 1508

vania Railroad.

Q How long have you held that position? A Six years.

Q How many men do you have under you? A I have 97
now.

Q Where are your headquarters? A My office is 109 West
Street, New York City.

Q That is right opposite the Cortlandt Street ferry
house? A Right across the street.

Q Now, Captain were you in the toilet room adjoining the
smoking room of that ferry house on the 24th of August, 1911?

A I was not in the toilet room.

Q Did you go in there at all that day? A Not that day,
no.

Q Did you go in the next day? A Went in the next day.

Q Did you go in the day before that? A Yes, I went in
that day.

THE COURT: Just pay attention to the questions,
and answer as you understand them.

Q Did you see that room also on the 15th of October,
1911? A Yes, sir.

Q Was it in the same condition? A It was.

Q Had there been any change in it? A Not any in the
least.

Q Were you there the day the photographer took a photo-
graph? A I was.

Q (by the Court) Were you there at the time of the taking
of the picture? A Yes, sir.

CASE # 1508

Q That room was in the same condition the day the photograph was taken as it was on the evening of August 24th?

A Yes, sir.

Q And is that a correct representation of the end of that room? (Handing witness People's Exhibit No. 1 for identification) ? A Yes, sir, that is.

MR. MCCORMICK: I offer the picture in evidence.

THE COURT: Received.

Photograph received in evidence and marked People's Exhibit No. 1 of this case.)

Q Now, about eight o'clock on the evening of the 24th of August, where were you, between eight and nine? A well, between eight and nine o'clock, we was at the station house.

Q Where were you before that? A From seven o'clock in the evening until possibly five minutes of eight, I was standing on a pile of form that we had. They had been making a concrete building, a new station, and they had piled some forms up on the outside of the ferry house next to the river.

THE COURT: Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you, and when you come in the court room at two o'clock instead of sitting where you now sit, you will sit on that side of the room there. We will take a recess until two o'clock.

(The Court accordingly took a recess until two P.M.)

CASE # 1508

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

THE COURT: I understand one of the jurors has received a communication, and has an important business engagement, and wants to be excused from consideration of the case. Mr. Juror, I shall be sorry, very sorry indeed to lose you as a juror in this case, because of my knowledge of the services you have already rendered at this term of the Court, but in the light of your engagement calling you elsewhere, you are excused, by consent of both sides.

(The third juror being excused by consent, another juror is selected and sworn in his place.)

(The jury is duly sworn.)

Mr. McCormick opened the case to the jury on behalf of the People, as follows:

May it please the Court, Mr. Foreman and gentlemen of the jury:

This indictment charges the defendant, George Wallis, with the crime of sodomy; that is that he carnally knew a person, another man, with the mouth, on the 24th of August 1911.

The Pennsylvania Railroad Company maintain a ferry house at the foot of Cortlandt Street, in this town, and adjoining the waiting room was a man's smoking room, and

CASE # 1508

adjoining the waiting room was a man's smoking room, and adjoining that smoking room was a man's toilet, and this was a room-- I won't undertake to say the length of it, but, in one end of it were four toilets, and these toilets were separated one from the other by partitions, and the four of them occupied the entire distance crossing the end of the toilet room.

As you face these four toilets, the first one to the right, I will designate as No. 1; the next one 2, 3 and 4. Now, when these booths were erected, they were intact; that is, each partition was complete; there was no opening in it; and the partitions were about eight feet in height from the level of the floor.

Certain men connected with the Pennsylvania Railroad learned that holes had been bored in several of these partitions; they then caused to be bored in the ceiling, directly over the hole in the partition separating booth No. 1 from booth No. 2, two holes, and those opened into the room above the toilet, so that a person looking down through those holes could see both sides of the partition separating booth No. 1 from booth No. 2.

Now, outside of this room, or, rather, I will say that in the wall of the room adjoining booth No. 1 was a window; the lower sill of which was about seven or eight feet from the level of the floor, and outside on the dock, outside of the building, there is a lumber pile,

CASE #1508

upon which a man of ordinary height who stood would be able to ~~be~~ rest-- a man standing on this pile outside would be able to rest his elbows on the window that looked into booth No. 1.

Now, on the night in question, the 24th of August, 1911, several men were in the room above, looking down through these holes. Another man was standing on the lumber pile, outside of the window, from which he could look into booth No. 1.

Now, these men saw this defendant, Wallis go into booth No. 1 and those above saw the other man, Muller, go into booth No. 2. All three of these men looking, saw this man sit on the stool in booth No. 1, saw him lean forward, so his face was opposite the hole that had been cut in this partition between booth No. 1 and booth No. 2 and those men who were looking from above saw the other man, Muller, go into that booth, remove part of his clothing, and he inserted his penis into the hole that led into booth No. 1; and all of these men who were looking could see this defendant in booth No. 1 as I have described it, place ~~his~~ the penis of the other man in his mouth, and when that had been done, the man standing on the lumber pile outside, who was looking down through this window at this defendant, motioned to another man who was near a door that led into the waiting room, and from there into the toilet. He motioned to this man, who then darted in, went quietly and quickly through

CASE #1508

the door of booth No. 1, pulled it open, and the fourth witness saw this man in the act that I have described, pushed his head back, prevented the other man from coming out of booth No. 2, and when these men were in the waiting room above and through the window, and appeared the scene, the man who was the defendant's brother-in-law:

Then a conversation ensued, in which the defendant admitted their guilt. Now there is no need to ask you to find this defendant guilty or innocent, or individual, or either against either.

It is suggested

the court. Call your attention.

ROBERT R. MCDONALD, District Attorney, on behalf of the People, deposes and swears, testified as follows:

DIRECT EXAMINATION BY MR. MCDONALD:

Q What is your name? A Robert R. McDonald.

Q Where do you live? A 2473 Eighth Avenue.

Q What is your business? A Photographer.

Q How long have you been a photographer? A About ~~ten~~ years.

Q Did you take a photograph of an end of the toilet room in the large house of the Pennsylvania Railroad Company at Cortland Street? A I did.

CASE #1508

Q When? A October 15th 1911.

Q Is this the picture that you took (handing photograph to witness)? A It is.

Q Is that a true and correct representation of as much of that room as is shown in the picture on that day? A It is.

Q On that day, the 5th of October? A At that time, yes, sir.

MR. McCORMICK: I ask to have this marked for identification.

(Photograph marked People's Exhibit No. 1 for identification of this date.)

MR. McCORMICK: Your witness.

MR. TALLAFERRO: No cross examination.

WALTER J. DUNN, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your name? A Walter J. Dunn.

Q Where do you live? A 77 West 29th Street, Bayonne, New Jersey.

Q What is your business? A Captain of police of the Pennsylvania Railroad.

Q How long have you held that position? A Six years.

Q How many men have you under you in that capacity as captain? A 97 now.

Q Where is your office? A 109 West Street, New York City.

CASE #1508

Q I show you People's Exhibit No. 1 for identification, a photograph, and ask you if that is a photograph-- What that is a photograph of (handing same to witness)? A That is the photograph of the south end of the toilet at Cortlandt Street.

Q (By the Court) Toilet where? A At Cortlandt Street Ferry.

Q In what building? A In the ferry house.

Q Captain, were you in that toilet room on the 24th of August, 1911? A Yes, sir.

Q What time of day? A About five minutes of eight P. M. when I went in there.

Q And you observed the condition and appearance of the room that day? A Yes, sir.

Q Was there any change made in it from that time until the time that photograph was taken? the 5th of October?

A This is an exact photograph--

Q Answer that question.

THE COURT: Answer "yes" or "no", and if you cannot say that, the proper answer is, "I don't know."

A Yes, sir, this is the same.

Question read by stenographer as follows: "Was there any change made in it from that time until the time that photograph was taken, the 5th of October?" A No.

MR. McCORMICK: I offer that photograph in evidence.

MR. TALIAFERRO: No objection.

(received in evidence and marked People's Exhibit

CASE # 1508

No. 1 of this date).

Q Now, captain, between seven and eight o'clock on the 24th of August, 1911, I mean in the evening, where were you?

A I was standing on the outside of this toilet room, on a pile of boxes, I would judge about six feet high.

Q That is the top of this pile of boxes was six feet from the dock? A Yes, sir, the bulkhead.

Q This building was built on a bulkhead? A Yes, sir.

Q What were you doing there? A I was watching through a broken window in the toilet.

Q Does this photograph show the window through which you looked? A Yes, sir.

Q Where? A That corner there (indicating on Exhibit No. 1).

THE COURT: You are referring to People's Exhibit--

MR. MC CORMICK: One.

THE WITNESS: Right in that corner is the window; it is a four pane window. These panes are eighteen by twenty-six, and there is four of them in that window.

Q Was the window open, or shut? A The window was down, but one of the panes was broken out.

Q Now, captain, before that, do you know whether any holes had been bored through the ceiling of the toilet, through the floor of the room above? A Two holes bored through the ceiling that afternoon, on the 24th.

Q Were you there when they were bored? A No, I was

CASE #1508

not.

Q But you saw the holes? A I saw the holes; I ordered them bored.

Q Did you ever look down through those holes? A Yes, sir.

MR. TALIAFERRO: I move to strike out the statement of the witness that two holes were bored that evening.

THE COURT: He may testify when he last saw the place before there were holes in it, and when he first saw it when there were holes in it.

MR. MC CORMICK: I will bring that out with another witness.

THE COURT : Strike it out.

Q Now, captain, tell us what you saw-- First, you say one of the panes was out of the window? A Yes, sir, one of the lower panes in this window was broken.

Q To the right or to the left? A To the right.

Q To your right as you looked in the window? A To my right as I looked in the window.

Q Tell us what you saw? Take your time? A About 7:45 P. M. I saw Wallis go in booth No. 1, and he sat down on the stool, and he kept watching through this hole that was between the partition, and that continued, I would say, about ten minutes. I could see through the hole in the partition that there was somebody in the other side, although I could not see him. At about seven fifty-five I saw a penis come through

CASE # 1508

this hole from booth No. 2 into booth No. 1. I saw Wallis reach over and take hold of it with his hand, and then take it in his mouth. I watched him, and motioned to Carney, whom I had stationed on the outside to go in; and he held that in his mouth until Carney came in and pulled the door open, and pushed his face away from it.

Q Who is Carney? A Carney is one of my officers.

Q (By the Court) What is his first name? A Thomas, Thomas J. Carney.

Q Did you see Carney when Carney opened the door of booth No. 1? A I did.

Q What did you do then? A As soon as Carney opened the door, and pushed his face away I jumped down off this pile of boxes that I was standing on, and ran around and came into the toilet myself.

Q What happened there? A I goes to booth No. 2 and took the fellow out of the booth that was in No. 2. I opened the door, and he was then adjusting ^{his} pants.

Q Did you have any conversation with either of these defendants? A Yes, sir.

Q What was it? A After we got them out of the toilet, Wallis wanted to have a conversation-- wanted to tell Carney and I something, and says, "Come over here, I want to speak to you". We went over in the other end of the toilet, and he says, "Now, let me go," he says, "I am of a good family", and I says, "Do you deny that you committed this crime?" And

CASE # 1508

he says, "No, I don't".

Q What then happened? A Then I sent for a policeman and had him locked up.

Q That is all you know about the case, is it? A That is practically all I know.

Q Have you left out anything? A Nothing that transpired there that I know of.

MR. McCORMICK: Your witness.

CROSS EXAMINATION BY MR. TALIAFERRO:

Q The photograph that has been offered in evidence, you say, is a correct photograph of the conditions, physical conditions, as they existed on the 24th of August 1911? A So far as the west end of that toilet is concerned it is.

Q The West end I mean? A Or the south end.

Q And they are not the same conditions that exist there now, are they? A No.

Q What changes have been made since that time? A Took the doors off these booths, and erected a kind of partial screen.

Q And you placed screens in front of these toilets, instead of these doors? A Yes.

Q With that exception is the photograph a correct representation of the conditions as they existed on the 24th of August? A Yes.

Q In other words, the doors being taken off, partitions between the toilets, and the cross pieces above the toilets, and the screens and the things are all the same? A All the

CASE #1508

same.

Q The general plan of the toilet room has not been changed? A Only that the doors were taken off and those screens put on. That is the only changes that have been made.

Q Captain Dunn, you were called as a witness before the Court adjourned for recess, were you not? A Yes, sir.

Q And I understood you to state that you stood on boxes from seven o'clock until five minutes of eight? A Yes.

Q Is that correct? A Yes.

Q Then you were there fifty five minutes? A Yes.

Q You were standing upon these boxes fifty five minutes for the purpose of looking into that window, to see what? A To see whether this crime was going to be committed.

Q Before you went up on top of these boxes, did you see this defendant? A No; no, sir.

Q Did you know that he was there? A Never saw him until I should say about 7:45, the first time I ever saw him in my life.

Q You had been on these boxes about fifteen minutes when the defendant came in? A No, about 45 minutes.

Q About 45 minutes? A Yes, sir.

Q Then he was only there less than five minutes after you saw him? A No, about 45 minutes after he came in there is when the crime was committed.

Q I understand you. You said you left

CASE # 1508

up on those boxes at seven o'clock? A Yes.

Q And you stayed up on those boxes until 7:55? A Yes, sir.

Q Well, then, he was in there until after eight o'clock?

A He was in the toilet just about eight o'clock, when I looked at my watch, and we sent for the officer.

Q If you were only there from seven o'clock until 7:45 you could not see anything after 7:45, could you? A I saw men come in this toilet on legitimate business and went out.

Q Where were you after 7:45? A Standing on those boxes, and got down from there about 7:55.

Q 7:55? A Yes, sir.

Q And you were up there ten minutes after seven forty five? A Yes.

Q And you got down off those boxes at 5 minutes to 8 o'clock? A Yes. I didn't look at my watch, but that is about the time that was consumed. I should have stood about 5 minutes to seven.

Q (By the Court) You mean five minutes or seven? A Five minutes, of eight, I should say.

Q You at that time were representing the Pennsylvania Railroad? A I was captain of police of the Pennsylvania Railroad.

Q And it was part of your duties to protect property and prevent crime, wasn't it? A Yes, sir.

Q The way in that you did not stop this fellow and prevent him from doing what he was doing? A That is what I was trying to do.

CASE #1508

Q Why did you wait until it was committed? A Because that is what I was trying to do, to see whether these crimes were being committed, and if they were to catch them in the act.

Q You climbed up on the outside of this building, and you were looking through about five minutes, and you didn't know if any one was coming in there or not, did you? A No; I didn't.

Q Couldn't you as easily have gone where the crime was committed, and prevented it, as well as to have detected it? A I suppose probably I could.

Q Why didn't you do that? A Because I didn't want to do that? I wanted to see whether these crimes were being committed, and if they were, I wanted to catch somebody.

Q Did you know that if you stood by and saw a crime committed, and you did not do all in your power to prevent it, that you consented to it, that you became a party to it? A No.

MR. McCORMICK: I object to that.

THE COURT: He answers he didn't know that.

Q You did not? A No.

Q You had never seen the defendant before that time, had you? A Never in my life.

Q How old a man are you, captain? A I will be fifty years old the 15th day of May if I live.

Q And you have been in the employ of the Pennsylvania

CASE # 1508

Railroad for six years? A Nine years.

Q Nine years? A Yes, sir.

Q As a special officer all of that time? A I was a lieutenant of police for three years, and have been captain of police for six years.

Q What do you call the police? That is a special police, created for the Pennsylvania Railroad? A That is our police department.

Q It has nothing to do with the Police Department of the City of New York? A Not any.

Q And you don't have the police powers that the City of New York has? A No.

Q Where were you engaged before that time? A On the Erie Railroad.

Q Which? A The Erie Railroad.

Q In the same capacity there? A No, I was patrolman on the Erie Railroad.

Q Patrolman. A Yes, sir.

Q And how long were you with that road? A Eight years.

Q And before that time what business were you engaged in? A Well, I was tool dresser in the oil country, in the oil regions. I used to dress tools in the oil country.

Q You have been a special agent for the Pennsylvania Railroad, or a special officer for about nine years? A Nine years ago the first day of this month.

Q Captain Dunn, did you see Mr. James Weikly, the father of the deceased, on the first day of this month, and placed

CASE # 1508

A He was in my office on the afternoon of the 25th.

Q This occurrence took place on what day of the week?

A On Thursday, I think.

Q Then, Mr. James Weikly, the father of the defendant, was in your office on Friday afternoon? A The 25th the next day.

Q And did you have a talk with him? A Yes.

Q Did you go with him to where this-- where you say this thing occurred? A I did.

Q Did you go into this toilet room and show him the place where it occurred? A Yes, sir, all about it.

Q Did you tell Mr. Weikly, James Weikly, on that occasion, while in that toilet room that you were up on a ladder, looking through that window? A I did not.

Q Did you tell him that Mr. Carney, one of the witnesses, was up over these toilets in the floor above, looking through those holes? A I did not.

Q You made no such statement as that to him? A Not in the least.

Q This window that you speak of, which was broken, which one of the windows was it? There were four of them?

A It was the lower right hand window, right hand pane, I should say.

Q How much of it was broken out? A All broken out, but a couple of little pieces hanging in the corners.

Q About how much? A Oh, probably a couple of inches long.

CASE #1508

Q Not probably, because these men-- A I didn't measure it. This is as I recollect it.

Q You did not make any measurements of it? A Not of that, no.

Q You did not cut out that glass, did you? A No.

Q It is not here in the court room to be ~~presented~~ offered as evidence? A No.

Q Which corner was this broken piece of glass in in that window? A I could not tell you.

Q You cannot? A No.

Q You know there was a piece of broken glass in the right hand lower window; you know that, do you? A What?

Q (Question read by stenographer as follows: "You know there was a piece of broken glass in the right hand lower window; you know that, do you?") A As I recollect, there was a piece of glass in the corner.

Q (Question read by stenographer as follows: "You know there was a piece of broken glass in the right hand lower window; you know that, do you?") A I don't remember; I could not tell for sure.

Q Then you don't know whether there was a piece of glass in the lower right hand window or not? A No. It is my recollection there was.

Q You don't know; you are not willing to swear to the jury there was? A No, I would not be willing to swear there was because I can't swear positively.

CASE #1508

Q Then if you are not willing to swear that there was a piece of broken glass through which you saw this thing, why did you say there was? A I said it was my recollection.

Q You just said-- A And I say that now.

Q You just said, a moment ago, you would not be willing to swear there was? A No, but I would be willing to swear that that is my recollection, that there was a little piece of glass in the corner of the window in this sash.

Q Did you call Mr. James Weikly's attention, the father of this young man, to the fact there was a piece of broken window there through which you saw this thing? A I showed Mr. Weikly the whole situation there.

THE COURT: Strike that out.

(Question read by stenographer as follows: "Did you call Mr. James Weikly's attention, the father of this young man, to the fact there was a piece of broken window there through which you saw this thing")? A Yes.

Q Well, now, are you positive about that? A Now, that is my recollection, that I pointed this window out to him, where I was looking through.

Q I am asking you if you are positive about it? A Yes, I am. I remember now that I did point up to this window, to Mr. Weikly, and says, "I was looking through broken window".

Q Since you and I have talked about it, if you are positive of it now, why wasn't you positive of it a while ago?

A Well, it has just come to my recollection now we got to

CASE # 1508

talking about it.

Q Which corner of that glass was this broken piece?

A The right hand or the left hand corner; I told you before I didn't know.

Q You have no recollection as to which one? A I would not swear positively that there was a piece of glass in the corner.

Q I would not swear positively that there was a piece of glass in the corner of this pane that was broken, but my best recollection is there was a little corner; that is all I can say.

Q You now swear, and state to this jury on your oath that you are not willing to swear positively that there was a piece of glass broken at all? A I will swear that the glass was broken, but I won't swear there was a little piece in the corner, because, as I said, I don't remember, but my recollection is there was.

Q It was the lower glass and the right hand glass that was broken, was it? A Yes, sir.

Q Was the piece broken in the right hand corner or the left hand corner? A I can't tell you that.

Q Was it in the centre? A The window was broken out.

Q How much of it was broken? A The window was broken out, and, as I recollect, there was a little piece hanging in the corner.

Q Don't say if you recollect. I am asking you where ~~it~~

CASE #1508

this piece of glass was broken out of that window? A well, I told you I can't tell you which corner it was in.

Q Was it in the right or the left hand corner?

THE COURT: He says he cannot say.

Q Was it in either one of the top corners? A I told you I could not tell you which corner it was in.

Q Then in answer to my question whether it was either of the top ~~xxxxx~~ corners, you say you can't state? A Yes, sir.

Q That is correct? A Yes, sir.

Q Were you drinking on that day? A What?

Q Were you drinking that day? A Drinking intoxicating liquors?

Q Yes. A No, sir.

Q Had you been drinking that day? A No, sir.

Q Had any of the crowd been drinking that was with you that day? A None of my crowd.

Q Had Carney been drinking? A No, sir.

Q Or Knutter? A No, sir.

Q Nor Bangs? A No, sir.

Q Don't you know as a fact, that all of you had been drinking? A I know as a fact that none of us had been drinking.

Q You can only tell what you were doing? A Yes, sir; the men were with me that day, and I know they were not drinking.

Q Can you tell what they were doing when you were not with them? A They were with me all that afternoon.

CASE # 1508

Q You mean to say while they were with you they were not drinking? A Yes, sir.

Q After you had arrested these men, did you and Carney have a conversation with the defendant--

MR. TALIAFERRO: If your Honor pleases, it is proper for me to state, as the District Attorney has already stated that the defendant now on trial gave his name as George Wallis. In order not to confuse him and his father, his proper name is George Weikly.

THE COURT: I think it would be a good plan to have the indictment amended by inserting the true name.

MR. TALIAFERRO: I have no objection to that.

Q After these men were arrested you and Carney had a talk with George Weikly, the defendant, didn't you? A Yes, sir.

Q Did Mr. Carney ask you the question how he was fixed, and whether he had any money? A We did not.

Q No such conversation as that took place? A No, sir, not in my presence.

Q I am asking you in your presence. Did he go further and ask you whether his people, or his father, had any money?

A No, sir.

Q Did any such conversation as that occur between Carney and the defendant, so far as you know? A No, sir.

Q Now, at the time you were standing on top of this pile of boxes and at the time you waved your hand where was

CASE # 1508

Carney? A Carney stood about four feet from the door that goes from the bulkhead into the smoking room.

Q Was he on the outside of the smoking room? A Yes, sir.

Q How far was he from you? A About 25 feet.

Q Was he in a position at that time where he could see into the toilet room? A No.

Q Then he was on the outside of the smoking room, next to the Hudson River? A On the bulkhead.

Q And just close to the jury box you waved your hand?

A (Witness illustrated by motioning with left hand out stretched, bringing same towards his body).

Q Was that a signal agreed upon before hand? A Yes.

Q Then Carney was not out looking out through one of ~~xxxx~~ these two holes? A No, sir.

Q Who was up there? A Bangs and Knutler.

Q Who was then engaged in detecting this crime? A Not a man.

Question read by stenographer as follows: "Who was there engaged in detecting this crime?" A Myself, Carney, Bangs and another.

Q Then there was only four of you? A Yes.

Q Then if the District Attorney made a mistake in his opening to the jury, that there was three men upstairs looking down through that hole, he was mistaken, was he? A He was.

DR. SACORATOK: I did say that, but I corrected it

CASE #1508

Q Then there were only two men upstairs looking down through this hole? A That is all I know anything about.

Q And those two men were Bangs and another? A Yes, sir.

Q Had you placed Carney there for the purpose of giving him this signal? A I had.

Q Captain Dunn, this window that you say you were looking through is on the Hudson River side of the ferry house, is it not? A Yes, sir.

Q And there is a scum which formed over that window, isn't there, at all times? Isn't that correct? A Well, I can't tell you.

Q Well, isn't there a film that makes it dirty and dull and a scum over it, so you can't see through it, the very window you say you were looking through? A There was not any pane in there; I could look through that night.

Q Assuming there was a pane there? A Well, now, I couldn't tell you.

Q There were two of those windows, two above and two below? The one in which there was no hole broken, or no part of it broken, that had a scum over it, a dim scum, so as to prevent any one from seeing through it, didn't it? A Well, I couldn't tell you; I don't remember.

Q Did you try to look through the other pane, to one that was not broken? A No, not as I remember.

Q You did not try to look through that? A No.
could

Q If you had tried, could you have seen through it? A I don't

CASE #1508

know whether I could have or not; I don't remember whether it was a seam over it, or whether there was not.

Q I am going to ask you the question again. I have gone over this, but I want to be certain about it. Will you swear to this jury that there was a piece of glass broken out of that right hand pane? A I swear the whole glass was broke out.

The entire
Q ~~By breaking~~ glass? A Yes, and my recollection was that there was one crack that had a piece hanging in.

A And, outside of that, the entire glass was gone? A Yes.

Q Why didn't you state that before? A That is what I state.

Q Mr. Chairman: He did.

Q I asked, did you? A Yes.

Q Will you swear to the jury that that is what your statement was when questioned a while ago? A Yes, sir.

Q And when you said you did not know there was any part broken or not. Now, you said there were two holes there?

A Yes, sir.

Q Do you know of your own knowledge when those holes were bored there? A I didn't see the holes bored.

Q Do you know whether they were there the day before or not? A I know they were not.

Q Do you know whether neither one of them was there the day before? A I know neither of them were.

CASE #1508

Q Do you know these two holes were there the night that this occurrence took place? A Yes, sir.

Q You know that to be so? A I know that to be true.

Q Do you know whether those holes were bored from below or above? A I could not tell you that.

Q Of your own knowledge? A I did not see them bored.

Q Before this occurrence took place, do you know whether there was any hole in the floor up over the toilet, not in the ceiling but in the floor? A Now, I just don't understand you.

Q (By the Court) In other words there is a wooden floor on what I will call the second story, and underneath that and forming the ceiling of the place over the toilet there is lath and plaster, isn't that so? A Yes, sir; there is a concrete floor in the old abandoned toilet upstairs. Now, there was a hole about a foot square cut through this concrete, and then it is about thirteen inches from the top of this concrete down to the ceiling, and the ceiling is made of matched lumber. Those holes were bored through there.

Q Now, do you know when this hole was cut in the concrete ceiling above? A I didn't see the holes.

Q Was the hole cut in the concrete ceilings before this occurrence took place? A Yes, sir.

Q Was it cut there the day before, or was it there two days before? A It was not there the day before.

Q But it was there at the time of this occurrence?

CASE #1508

A Yes, sir.

Q Did you measure the size of that hole? A Yes, sir.

Q What did you measure it with? A Measured it with a tape line.

Q Did you make a memorandum of the measurement? A Yes, sir.

Q Have you the memorandum with you? A Yes, sir.

Q Let me see it? A No, I didn't make a memorandum of that measurement.

Q What? A I didn't make a memorandum of that measurement.

Q What measurement did you make a memorandum of? A I made a memorandum of some measurement around the toilet.

Q Do you know what the size of the hole in the concrete floor was? A I measured that, but I didn't make a memorandum of it, it is a foot square.

Q Are you a bit mistaken, and is it not 8 inches square? A No, sir; it is a foot square.

Q Are you positive of that? A Yes, I am positive.

Q Why was it that you did not keep a memorandum of the hole in the concrete floor as well as around the toilet?

A Well, I don't know why, because I did not make a memorandum of it; that is all. I measured it at different times.

Q ~~And this work~~ All this work was done under your superintendence, wasn't it? A Cutting the holes through?

Q Yes. A Yes, sir.

CASE #1508

Q You ordered it done? A I ordered it done.

Q And the arrest of these defendants was all done under your superintendence? A Yes, sir.

Q And under your direction? A Yes, sir.

Q And you planned it all, didn't you? A I did.

Q You directed where those holes should be bored?
A No. Yes, I said the holes should be bored overhead,
so that we could see down in these toilets.

Q And you directed how the holes should be cut in the concrete? A No, sir; because I didn't know there was concrete in there at that time.

Q You directed Carney where to stand to receive the signal didn't you? A Yes, sir.

Q And you directed Bangs and another to go above and look down through these holes, did you? A Yes, sir.

Q There were two of these holes up over the toilets numbered 1 and 2? A Yes.

Q That is correct, isn't it? A Yes, sir.

Q How far were they apart? A I think--

MR. TALIAFERRO: I understood, Mr. District Attorney, you had them in court here.

THE WITNESS: Three inches apart, as I recollect it.

Mr. McCormick hands article to Mr. Taliaferro.

Q Those are the two holes, are they (indicating on article)? A Yes, sir.

CASE # 1508

THE COURT: I think, Colonel, that had better be marked for identification, as an exhibit. (Article last referred to is marked defendant's Exhibit A for identification of this date).

Q Now, I am showing you, in the presence of the jury, defendant's Exhibit A for identification. Assuming the side I am pointing my finger to to be the Hudson River side; that is correct, isn't it? A Yes, sir.

Q The other hole has a splinter torn off it; is that correct? A Yes, sir. You want to turn that over. That is the ceiling.

Q Then the hole with a splinter in it, the splinter off it -- rather is the one further from the window? A Oh, I don't know.

Q You don't know how that is? A I know that is the way it is set in the ceiling. One hole would be towards the window and one towards--

Q The way it set in the ceiling, the hole with the splinter is the furthest from the window? A I don't know; I couldn't tell you that.

Q Which one of these holes, or is both of them directly against the partition between No. 1 and No. 2? A The partition was right in front between those holes.

Q And you made a measurement of that? A I looked through the hole when I was upstairs afterwards.

Q Did you make a measurement to see whether or not the

CASE #1508

partition would come directly between those? A No, I did not.

Q But you did better than that. You went and looked to see? A Yes, sir.

Q And in looking down through these two holes, you discovered that the partition would be directly in a parallel line, right between the two holes? A Yes.

Q That is ~~direct~~ correct, is it? A Yes.

Q Now, you are not mistaken about that, are you?

A Well, I looked down through the holes, and I could see into one booth, and into the other.

Q You have just stated positively that the partition would be in a direct line between the two holes, haven't you?

A Well, I would say yes.

Q Do you still say yes? A Yes.

Q Now, I ask you again, you are positive of that?

A Yes, sir.

Q And you saw it with your own eyes? A Yes, sir.

Q Therefore, you can't be mistaken, is that correct?

A Yes; that is right.

THE COURT: Now, we will adjourn. Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or to form or express any opinion thereon until the same is submitted to you.

The Court recessed until to-morrow, Friday, March 15th, 1912, at ten thirty A. M.

CASE # 1508

THE PEOPLE, &c against GEORGE WALLIS.

New York, Friday, March 15th, 1912.

T r i a l C o n t i n u e d .

THE DEFENDANT IS ARRAIGNED AT THE BAR.

W A L T E R J . D U N N , resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. TALIAFERRO:

Q Mr. Dunn, I asked you the question yesterday if you saw Mr. James Weikly, the father of the defendant on the night or the afternoon following the arrest and you said you did. A A man who said he was his father.

Q Did you at that time in the ferry house, at Cortlandt Street and Hudson River, tell the father of the defendant that you climbed up on the outside of the building on a ladder? A I did not.

Q And did you tell him that you looked through the window glass and saw the defendant in the act? A I did not. I told him I looked through a broken window, and pointed the window out to him.

Q Did you tell him at that time also that Mr. Carney was upstairs, looking through the hole? A I did not.

Q At the time that you were looking through this window there were two lights over these toilets, wasn't there? A Yes, sir.

Q There was a pipe coming down from the ceiling, and a hole in it, and a light on either end of it. A Yes, sir.

CASE # 1508

Q And those gas lights were about half a foot or four inches from the top of the partition, were they not? A You mean facing the doors?

Q How high above the partition? A I should think so. I didn't measure them. I think about four or five inches.

Q They were gas lights, were they? A Yes, sir.

Q Were they bright lights or were they dimmed by soot and scum that gathered on the glasses? A No; they were bright.

Q They were bright, were they? A Yes, sir.

Q And how far was the side-- I withdraw that. The side of the building you climbed up was right on the banks of the Hudson River? A Right on the bulkhead.

Q Now, when was that glass broken out, if you know? A I don't know.

Q Did you know it was broken out at all until that night? A Yes, sir.

Q When did you first discover it? A I discovered it that afternoon.

Q Well, you didn't discover it until that afternoon?

A No.

Q The same afternoon that you caught these men in the act? A Yes.

Q And when was a new glass put in? A That I can't tell.

Q Would you give me an idea? A Well; I can't give you an idea of the way. That would be only what I heard.

CASE # 1508

Q Did you put any glass in yourself? A I did not.

Q Didn't some one go there and take a sharp instrument used for cutting glass, or a diamond, or something of that kind, and cut the glass out? A Not that I know of.

Q At any time? A At any time, never.

Q You did not, so far as you know? A I know nothing about that.

Q In regard to these two holes that you speak of, and which have been shown to you you say you don't know who bored those holes, of your own knowledge? A Not of my own knowledge.

Q Do you know who got the auger? A No, I was not there when those holes were bored.

Q Did you have anything to do with going to Jersey City for the purpose of getting the auger to bore those holes?

A No, sir.

Q Did you go yourself or send anybody? A I did not; I told you I had nothing to do with it. I was not there when the holes were bored.

Q Now, you have stated that you looked through the right window; that is your right. A Yes.

Q You were looking down in the toilet No. 1 and you were looking through the right hand window, on your right hand side; that is correct, isn't it? A That is right.

Q And there were four windows, two above and two below?

A Yes, sir.

CASE #1508

Q How far was it from the floor to the lower part of the sill of that window? A well, about eight feet.

Q About eight feet? A Yes, sir.

Q And how far from the lower sill of the window to the ceiling? A well, that would be about five or six feet.

Q Making a total of about thirteen feet from the floor to the ceiling? A Yes, sir.

Q That is correct, is it? A Yes, sir.

Q Did you see the defendant when he came into the toilet? A I did.

Q Did you see the other man when he came in? A No, I didn't.

Q Was he in there when you got there? A I didn't know. I can't tell you when that man came in; I didn't see the man until I went down off this platform, and went around and took him out of that booth.

Q You had been there three quarters of an hour when you saw this act? A Yes, sir.

Q And no one came in to toilet No. 2 while you were there during that three quarters of an hour? A I could not tell you whether they did or not.

Q Couldn't you have seen them from that window? A I did not see them; I did not notice them.

Q Couldn't you have seen them? A I can't tell you that, whether I could have or not.

Q You were there for the purpose of seeing-- A I was

CASE #1508

watching No. 1 toilet.

Q And what is the size of No. 1 toilet? A It is four feet by three feet.

Q Which? A Four by three.

Q Four by three feet? A Four feet deep and three feet wide.

Q And No. 2 adjoins it, with a thin partition between?

A Yes, sir.

Q And the door of No. 2 opened towards him? That is it opened from you, but the opening of the door ^{on your} was ~~in which~~ side of No. 2, wasn't it? A I think so.

Q So that if any one had gone into No. 2 during the three quarters of an hour you were there, you could have seen them, couldn't you? A I imagine I could, but I don't remember seeing this man go in there.

Q You were there for the purpose of seeing? A I was watching No. 1.

Q But you could not keep from seeing any one enter No. 2; isn't that so? A I can't answer that.

Q Then you did not know that any one was in No. 2 until this criminal act took place? A I could see through the hole in the partition, that there was somebody moving in there occasionally, but I could not see him because the partition was higher.

Q When did you first discover there was somebody in No. 2? When did you first discover that? A The fact is I can't

CASE #1508

tell you because I was not paying any attention until I see ~~th~~ this act was being-- coming off, and then I paid attention to see what it was. There was nothing to call my attention to anything in there before that. There had been no crime committed.

Q You did not discover there was any one in No. 2 until the act took place? A Yes, sir, I saw some one moving in there.

Q How long before the act took place? A About five minutes.

Q Is that a guess or is it true? A Well, I didn't take the time.

MR. TALIAFERRO: Have you got the hole in the partition sawed out?

(Mr. McCormick hands article to Mr. Taliaferro.)

Q That is the partition, isn't it? A Yes, sir.

MR. TALIAFERRO: I ask that it be marked for identification.

Article last referred to is marked Defendant's Exhibit B for identification, of this date.)

MR. McCORMICK: I offer it in evidence.

THE COURT: received.

(received in evidence and marked Plaintiff's Exhibit No. 2 of this date.)

MR. McCORMICK: I also offer in evidence Defendant's Exhibit A for identification.

CASE # 1508

MR. TALIAFERRO: No objection.

(Defendant's Exhibit A for identification received in evidence and marked Plaintiff's Exhibit No. 3, of this date.)

Q The hole in the partition between the two toilets, and which I hold in my hand, did you saw that out yourself?

A No, sir.

Q At the point sawed out there was a paper holder there, wasn't there, a toilet paper holder? A It is there yet.

Q Is it there yet or not? A Yes.

Q Wasn't it removed when they removed this piece?

A No.

Q It is still there? A Still there.

Q Was that on about a level with the hole in the partition? A No, I think it was about five or six inches higher.

Q Are you certain about that? A That is my recollection.

Q Didn't you take a measurement of it? A No; I did not.

Q You did not measure it? A No.

Q That is a mere guess of yours? A That is my recollection.

Q And how far was it from the hole in the partition, how many inches? A Oh, probably ten inches, maybe not quite so much.

Q Ten inches? A Yes, sir.

Q Are you speculating, or are you simply guessing? A I didn't measure it.

CASE # 1508

Q Don't you know it is only about two inches from the paper holder and the hole in the partition? A I know the paper holder is there yet, and that was sawed out.

Q When did you see the paper holder there? A It was there the day it was cut out; ~~xxx~~ I was ~~xxx~~ there when that board ~~xx~~ was cut out.

Q I see some holes here on each side, indicating that something has been removed there? A Yes, tin has been nailed over that a good many times, and pulled off.

Q After you discovered this crime you nailed some tin over this hole? A No, I did not.

Q You had it done? A No, sir.

Q Some one did it in ~~xxxx~~ behalf of the Pennsylvania Company? A Yes, sir.

This is only hearsay, what I am going to say--

THE COURT: No, you are not going to say anything that is hearsay.

THE WITNESS: That is what I thought, that I would not be allowed to do.

Q Then, immediately over this hole, there was a hook, to hang coats on, wasn't there? A Yes, sir.

Q How high over the hole was that hook to hang the coats on? A Oh, I would say, as a guess, two feet.

Q Two feet? A Yes, sir.

Q That is a guess, too? A Yes, sir.

Q You have not taken any of those measurements, have you?

CASE # 1508

A No.

Q When you saw the defendant, as I understand you, he came in, and did he take his coat off? A He did.

Q You were there, looking at him, were you? A Yes, sir.

Q And did he remove his hat or not? A He did.

Q Are you positive of that? A I am.

Q And what did he do with his coat? A He hung it up on this hook, and the hat on that hook, too.

Q And the hook was fastened to the partition between No. 1 and No. 2? A Yes, sir.

Q So that it was right opposite to you, was it, the hook? A Pretty nearly, pretty nearly opposite to where I stood.

Q You say the defendant took his coat and hat off, too? A Yes, sir.

Q What did he do with the hat? A Hung it up on the hook.

Q He hung it up on the same hook? A Hung the coat up first, and then hung the hat up.

Q Do you remember what kind of coat it was he wore? A A dark colored coat.

Q And what kind of hat was it he wore? A His hat was a kind of slate color.

Q It was what you call a Fedora; it was a soft hat? A It was what you might call a soft hat, it had a crease in the top of it.

Q Now, Captain Dunn, when this man, the defendant, held

CASE # 1508

his head over towards that hole, you being at that window, his head would be directly between you and the hole? A No, sir.

Q Why not? A Because the window was a little further to the north.

Q A little further to the north or to the south, which?
A A little further to the north.

Q Are you positive about that? A Yes, I am positive about that.

Q How much further? A Well, I could not tell you. Part of the window is out in the toilet room, and part covers this booth.

MR. TALIAFERRO: I want to exhibit a paper to the witness. Can I have him step down here?

THE COURT: Certainly.

Q I exhibit to you a paper which I ask be marked Defendant's Exhibit No. 1 for identification.

(Same is marked Defendant's Exhibit C for identification of this date.)

Q I show you this diagram, representing four windows. At the point where I place my finger, is that a correct representation of those windows?

MR. McCORMICK: Let him have a chance to look at it before he answers.

A Is this supposed to be Booth No. 1 (indicating on diagram)?

Q Yes, sir. A I would say that was a correct repre-

CASE # 1508

sensation. That window right there, was the one I was looking through (indicating).

Q You are pointing to the lower right hand window from where you were standing? A I was looking here, facing this way (indicating on exhibit) and that would be to my right hand. That is the window that was broken, right over the top of that partition.

Q Now, the centre of that window frame which divides the two windows would come down about opposite the outside partition of toilet No. 1, would it not? A If that represents the door, does it?

Q Yes. A Yes, that would come right over where the door of booth No. 1 was.

Q Then according to this figure, according to this diagram, that paper box would be just about here, would it, where I put my pencil (indicating on diagram)? A Right in there somewhere.

MR. TALIAFERRO: (To the jury) You will observe, gentlemen--

THE COURT: Do you introduce the blue print in evidence?

MR. TALIAFERRO: I offer it in evidence.

THE COURT: Have you any objection?

MR. MCCORMICK: I have no knowledge of whether it is a correct map, or not.

MR. TALIAFERRO: The witness has said it is a correct map.

CASE # 1508

THE COURT: Do you testify it is correct?

THE WITNESS: It looks that way to me.

MR. MCCORMICK: He said that part of it seemed to be right, but there are many things on that map besides that b x, including a great many measurements.

THE COURT: I don't think it ought to be shown to the jury, Colonel, until it is in evidence.

MR. TALIAFERRO: Very well; I will hold it for the present.

THE COURT: If you want to, after it is offered, recall this witness, and interrogate him further about it, I shall allow it.

Q Captain Dunn, I ask you again if it be true, as you have stated, that the defendant put his mouth to the place where the hole was in the partition, if his head would not be directly between where you were looking and the hole? A It went right up to that hole, sideways, like that (illustrating).

Q What? A He put his head right up to the hole. He was sitting on this stool and he shoved his head over like that (illustrating).

Q He put it up sideways so you could see him, did he?

MR. MCCORMICK: Objected to.

THE COURT: Objection sustained.

MR. MCCORMICK: He didn't say anything of the kind.

MR. TALIAFERRO: But I am crossexamining.

CASE # 1508

THE COURT: But your question contained the assumption that the witness testified to something that does not, in the opinion of the Court, appear in the record.

Q You say he turned his head sideways? A I can indicate it, just the way he was.

Q well, indicate? A Just like that (illustrating) and he leaned over, when this penis came through that hole, and took hold of it in his hand, and took it in his mouth.

Q Show the Court again the position when he was in there, when he had it in his mouth? A Just that position (illustrating).

THE COURT: After the witness has taken a certain position, isn't it desirable that some words should express it for the purposes of the record?

MR. FALLABERNO: Indicating with his head turned sideways.

THE COURT: Indicating, leaning somewhat forward, with his head turned sideways.

Q Put your head back in that position and hold it there? A I don't want no picture taken of it.

Q Put yourself in the position you were in a while ago, that you say the defendant was in? A (Witness illustrates).

Q Now, indicate with your other hand where you were?

A Right up here, looking, on the outside, looking through that window, about, I would say, five feet.

CASE # 1508

THE COURT: Suppose I try and get it. Suppose you take the position. Now remember-- recall to yourself, as you sit there, the position that this defendant, as you say, was in, at the moment he turned his head. Now, suppose from his head a straight line was drawn to the point at which your head was, about how many feet away from the head of the defendant would you estimate that your head was?

THE WITNESS: I would estimate about six feet.

THE COURT: And about how much higher above the floor level of the floor on which the defendant was was your head than his head at the time his head was bent forward?

THE WITNESS: About six feet.

MR. TALIAFERRO: That is not the point I am driving at, if your Honor pleases.

THE COURT: I beg your pardon.

Q I will assume that this is the partition, do you understand? A I understand.

Q And entering into the details, which I dislike very much to do, I will put my pencil through this hole. Now, put your face there like he had his face.

THE COURT: I will not require the witness to do that. We will assume, for the purposes of the testimony that the head of the witness is down. What distance from the hole was the face of the defendant? *

CASE # 1508

THE WITNESS: The distance away from this hole?

THE COURT: Yes; how many inches would you say?

THE WITNESS: I would have to estimate the length of this penis.

THE COURT: Would you say two inches?

THE WITNESS: Four or five inches; it came through that far. (Indicating)

Q You mean the penis extended through that far? A Yes, sir.

Q How far? A About that far (indicating).

Q I want to measure that. I want to see what size penis that man has? A I will indicate it; I did not measure it.

Q Now, the point I am getting at, when he had his mouth in that position, his head in that position, point to the jury where you were? A On the outside looking through this window.

Q In the direction where you say you are putting your finger now? A Yes, sir.

Q Then at right angles from the defendant, to the right you were standing? A Pretty nearly.

Q Pretty near at right angles to the left? A Yes, sir.

Q You didn't see Muller's penis in this defendant's mouth? A Yes, sir.

Q Inside his mouth? A Yes, sir, seen him take hold of it, and seen him go down on it.

Q Don't you know it is an absolute impossibility? A No, I don't.

CASE #1508

Q Do you know whether that box containing toilet paper in toilet No. 1 was in good condition at that time, and in working order? A I do not.

Q Do you know, one way or the other? A I don't know anything about it.

Q You don't know whether it worked at all? A No; I don't.

Q Did you see any one take a roll of toilet paper and put it through that hole, from No. 2 to No. 1? A I did not.

Q Did you see the defendant at the time you were at the window, take a piece of toilet paper and put it through that hole and use it in cleaning himself? A We did not.

Q No such thing as that occurred? A No such thing as that occurred.

Q His Honor has asked you how far you were from the defendant's head.

BY THE COURT:

Q How far your head was from the defendant's head at the moment when you say he leaned forward and put his head within a certain number of inches from the hole? A I would say about six feet.

Q And you would say your head was at that time about how much higher than the defendant's head? A That is what I mean. My head was about six feet higher than the defendant's head.

Q I want you to pay attention to me, and if you don't understand me, you say so. In the first place, you were a

CASE # 1508

certain number of feet away from him. If you had been on the same level as he was, you would have been a certain number of feet away, isn't that so? A About a foot and a half away.

Q Only a foot and a half to the side? A To the side. This booth is about three feet wide, and he ^{sat} ~~stood~~ in the middle.

Q In other words, you were only about a foot and a half to one side of him, and the balance of the distance was made up by the fact that you were higher than he was? A Yes, sir.

Q A foot and a half to his left? A Yes, sir, well, say two feet.

Q Two feet to his left and six feet above him? A Yes, sir; that is the way I estimate. That is what I intended to say.

BY MR. TALIAFERRO:

Q You made some measurements there? A Yes, sir.

Q What is the size of toilet No. 1? A You mean the booth?

Q Toilet No. 1? A Well, it is all one toilet.

Q I mean the booth, yes. A It is three feet by four feet.

Q Which? A Four feet deep and three feet wide.

Q That is three feet across, where the door is? A Yes.

Q And four feet across in the other direction? A Four feet deep.

CASE #1508

Q And midway would be a foot and a half? A Yes, sir.

Q Then the defendant must have been less than a foot and a half close to the wall from which you were looking?

A The stool is right in the middle of the toilet or booth.

Q You have stated that the distance from the lower part of the window to the floor is about ten feet? A No, about eight feet.

Q I mean eight feet, about eight feet, and about how high above the floor was the defendant's head when he was in the act? A About two feet and eleven inches.

Q Say three feet? A pretty nearly three feet.

Q Then you were about five feet from his head? A well, I was up a little higher? A Yes, sir.

Q Did you have a hat on at that time? A A what?

Q Did you have your hat on when you were looking out that window? A I suppose so.

Q Did you put your elbows on the sills of the window in this way (illustrating)? A I would not say whether I did or not.

Q How much of your person, of your head and shoulders, extended above the lower part of the window when you were looking at this act? A Oh, I was about that much higher (indicating). I could look right over like that (illustrating).

Q Put your hand back there again, will you? A There (indicating stomach).

Q Was that much of you exposed in the window? A That would

CASE # 1508

be about where the bottom of the window would come.

Q And you put your hand about where your navel is? A Yes, sir.

Q Then you were exposed in that window from your navel to the top of your head? A Yes, sir.

Q During the whole three quarters of an hour? A Oh, I didn't have my head in the window; I was looking through the window. I was on the outside.

Q Any one-- If the defendant had been standing up, or sitting down, he could have looked up and seen you, couldn't he? A We could not, because I would look in there and pull myself back, and I would look in again, and when I seen this act being committed I leaned over, right in, and looked until Carney came in.

Q That was about a quarter or five minutes of eight o'clock in the evening? A What is that?

Q About five or ten minutes of eight o'clock in the evening? A We went in on them about five minutes of eight.

Q Weren't the ferry boats running every eight or ten minutes across to Jersey City at that hour of the day, at that time? A Yes, sir.

Q And wasn't people continually coming in and out of this toilet at that hour of the evening, or hour of the day? A Yes, sir.

Q Now, you say you were there looking through the window, from the back, on the outside of the buildings, and Bangs

CASE # 1508

and Knutter were upstairs? A Yes, sir.

Q There were three other detectives there besides yourself, were there? A There were no detectives there.

Q No detectives; you don't allow that word. A Do you mean our men?

Q Yes. A We call them policemen. They are carried on the rolls as policemen.

Q What were you doing there? Were you detecting somebody in crime? A We went in there to apprehend whoever committed a crime.

Q What do you call boring these holes and getting up to that window? What were you engaged in at the time? Doing detective work? A Well, I don't know what you would call it.

Q You call it special officers? A No, sir.

Q The District Attorney calls them special officers.

THE COURT: They are called sometimes policemen.
It does not make any difference ^{what} they are called.

Q At all events, they were employes of the Pennsylvania railroad? A Yes, sir.

Q All three of them under you? A Yes, sir.

Q And this work was done under your direction? A Yes, sir.

Q Why didn't you get some citizen who had nothing to do with the company to come in there?

MR. McCORMICK: Oh, I object to that question.

CASE # 1508

THE COURT: Objection sustained.

MR. TALIAFERRO: I ask for an exception.

Q Did you attempt to get any private citizen who had no connection with the railroad company to join you in discovering this crime? A No, I did not.

Q Made no effort of that kind; didn't ask any one?

A No, sir.

Q You knew, at the time of this arrest, that if, instead of the defendant's private person being through that hole, it should turn out that there was a piece of toilet paper being put through for his use, and that he was not guilty of this crime, that, if he was arrested, the Pennsylvania Railroad would be liable for heavy damages, don't you?

MR. MCCORMICK: Objected to as hypothetical. It assumes facts not in evidence, and it calls for a conclusion. It is also immaterial and irrelevant.

MR. TALIAFERRO: I will show, before this case is through, a state of facts that authorizes the asking of this question. I want to ask him now, and I will follow that up with another question, if he did not know, instead of its being the private person through that hole it was a piece of paper--

THE COURT: You have a right to get on the record anything that tends to show, if it exists, the interest or bias of this witness, and, as this witness is an employee of the company, you have the right to show by ap-

CASE # 1508

appropriate questions that, in certain contingencies that company might be subjected to liability.

MR. TALIAFERRO: Read the question.

THE COURT: I think you have on the record that he did not get any one other than the employees of the company. I don't think you can, in reality, go any further than that. That is for the consideration of the jury. It appears now from the evidence that this witness was at the time in the employ of the Pennsylvania Railroad Company and from his testimony that other persons who were looking or said to have been looking, were likewise in the employ of the company, and it appears that so far as he knows no one other than those had been asked to look. Now, you have got the circumstance that it was upon the premises of the railroad company where the thing happened, and you have got the circumstance that this present witness was acting under general instructions from the company. I think the balance is a matter of argument.

MR. TALIAFERRO: The only point, if your Honor pleases, I want to bring out, as I think I have a right to, that he was conscious of the responsibility he was assuming in having committed a wrongful act in arresting an innocent man, that he was compelled to go through with the prosecution, and, besides that, if your Honor pleases—

CASE # 1508

THE COURT: Well, he is presumed to know the law.

MR. TALIAFERRO: This is cross examination.

THE COURT: Well, frame your question, Colonel, and I will rule on it.

Q (Question read by stenographer as follows:) "You knew, at the time of this arrest, that if, instead of the defendant's private person being through that hole, it should turn out that there was a piece of toilet paper being put through for his use, and that he was not guilty of this crime, that if he was arrested, the Pennsylvania Railroad would be liable for heavy damages, don't you?"

THE COURT: I will sustain the objection. I don't think that embodies all the legal situation.

MR. TALIAFERRO: Exception.

THE COURT: The question of damage would depend on the existence or non existence, of probable cause.

Q Did you not know then, and ^{do} ~~did~~ you not know now, that if, after having made this arrest, it should turn out that the defendant and Muller were lawfully in those toilets, and one of them was passing toilet paper through the hole, and committing no wrongful act, and no act of sodomy, that you would not lose your job, and that you would be discharged by the Pennsylvania Railroad? A I don't know how to answer it

Q Now, Mr. Dunn, at the time when you saw this man's private person first pass through that hole, your head was within five feet of the defendant, wasn't it? A I was right

CASE # 1508

outside looking in, within five or six feet.

Q And you could have said to him, "Stop", and that would have stopped that crime, wouldn't it? A I could have?

Q Yes. A Yes.

Q That is all you had to do? A We would have stopped; I don't hesitate for a minute to say that.

Q He would have heard the word "Stop" if spoken in the same tone of voice I speak? A Yes, sir.

Q And you crouched behind the window, waiting for it to occur? A No, I didn't say a word to him.

Q I will ask you this question: Don't you know, as a physical fact, that when the coat hung down from the nail on which the defendant placed it, that the bottom of the coat would reach the paper box? A I think it did, and I think it probably hung below the paper box.

Q Below the paper box? A That would be my understanding, as I recollect it.

Q And don't you know it was near enough over the hole, that is, the nail upon which the coat was hung so that the coat would also hang over the hole, as well as the paper box?

A Over the hole cut through the partition?

Q Yes. A No; it did not hang over that.

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

Q And don't you further know that the coat hanging over there, then if the defendant had been doing it, you could not see his mouth while in the act? A I know it did not hang

CASE #1508

over there, because I could see that hole.

MR. TALIAFERRO: That is all.

RE DIRECT EXAMINATION BY MR. McCORMICK:

Q How far was the hole from the paper box? A The hole in the partition?

Q Yes. A I would say it was four or five inches.

MR. TALIAFERRO: You said eight or ten before.

THE WITNESS: I didn't measure it.

Which

~~Q~~ ~~It~~ was nearer to the side on which the defendant sat, the hole or the paper box? A The hole.

Q How many lights did you say there were in there?

A Well, there were three; three gas lights, double lights.

Q Was it dark where you were? A Yes, sir.

MR. TALIAFERRO: There is one question I omitted to ask you.

MR. McCORMICK: I will give you a chance in a minute.

Q Did you see another man saw this out of the partition?

(Indicating People's Exhibit No. 2) A I did.

Q You saw that cut out with a saw? A I did.

Q Who was the man that did it? A I got a carpenter from the contractor that is building the new ferry house.

Q And that hole is the same ~~when~~ it was cut out as it is now? A Yes, sir.

Q And the same now as it was at the time of the commission of this crime? A Yes, sir.

CASE #1508

228

MR. McCORMICK: That is all.

RE CROSS EXAMINATION BY MR. TALIAFERRO:

Q You said a while ago there were three lights. Where were those three lights? A One light hangs right over the partition between booths 1 and 2. Then there is another light between booth 3 and 4, and there is another light over the toilets on the side, and there is another one out at the door.

Q I understand there is one over toilets Nos. 1 and 2, and one over ~~kk~~ 3 and 4, but the other light is some distance from those toilets, isn't it? A Yes, sir.

Q I omitted another question. There were no locks on those doors, were there? A No.

Q No fasteners on those doors? A No.

Q Any passenger or any person coming into the toilet room could have opened that door? A Yes, sir.

Q Without any sort of resistance? A Yes, sir.

Q Do you know what a frame up is?

MR. McCORMICK: I object to that question.

THE COURT: Objection sustained.

MR. TALIAFERRO: That is all.

THE COURT: (To the witness) You are admonished, Mr. Witness, not to talk to any other witness.

MR. TALIAFERRO: I want to ask him another question.

BY MR. TALIAFERRO:

Q Have you had any conversation with any one since you

CASE # 1508

left the witness stand yesterday afternoon regarding this case? A No.

Q Have you had any talk with Karney or Bangs, or Knutter?

A Oh, no, not about this.

Q Where did you go after court adjourned yesterday afternoon? A Went down to my office.

Q Right from the court room? A Yes, sir.

Q Did you go with them anywhere? A They went down to the office with me. They are all my men.

Q Did you tell them what you testified to? A No.

Q Did you tell them the questions that had been asked you? A No.

Q Did not say a word about the case? A Not about what I swore to. I don't know we talked about the case at all.

Q Did you say anything about the questions that had been asked you? A No.

MR. TALLAFERRO: That is all.

THOMAS CARNEY, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q What is your name? A Thomas Carney.

Q Where do you live? A 142 1/2 East Avenue, Long Island City.

Q What is your business? A Special officer in the em-

CASE # 1508

ploy of the Pennsylvania railroad.

Q And as such what are your duties? A In protecting the company's property, and looking out for violations of rules and laws in its premises.

Q On the 24th of August, shortly after seven o'clock, where were you? A I was standing on the dock, in the rear of the smoking room of the Cortlandt Street ferry of the Pennsylvania Railroad.

MR. McCORMICK: I offer in evidence a diagram showing the floor space of the smoking room and toilet.

THE COURT: Show it to Col. Taliaferro.

MR. McCORMICK: Of the Cortlandt Street ferry of the Pennsylvania Railroad.

THE COURT: Is that your blue print, Colonel Taliaferro?

MR. McCORMICK: This is the one Colonel Taliaferro brought here, and it seems to be a proper diagram.

Q I ask you if that is a proper diagram of the floor space of those rooms? A I can't say it is a proper diagram.

Q You don't know that the measurements are right? A No, sir.

MR. TALIAFERRO: I will concede they are right.

MR. McCORMICK: Well, I don't know what they are. They might be all wrong.

THE COURT: Then the offer is withdrawn?

MR. McCORMICK: No, I offer it in evidence.

CASE #1508

THE COURT: There being no objection, it is received.

(Received in evidence and marked People's Exhibit No. 4 of this date.)

Q That is the smoking room, isn't it? A Yes, this is the smoking room, here (indicating on exhibit).

THE COURT: Suppose you make a mark on that exhibit with a pencil, indicating the smoking room.

WITNESS: The words "smoking room" are written there. That is the smoking room, where the words "smoking room" are written.

THE COURT: All right.

Q And the toilet where the word "toilet" is? A Yes, sir.

Q Where were you standing? A Put an X mark there-- put an X for the point where you were standing, and a D for the point where Dunn was. A That is where I was (marking letter C on diagram). What kind of a mark do you want for Captain Dunn?

Q Never mind; leave the C where you were standing. You were standing out on the bulkhead? A Yes, sir.

Q And you were not in any building? A No, sir.

Q You were outdoors and so was Dunn? A Yes, sir.

Q And Dunn was looking in a window? A Yes, sir.

Q What did you see Dunn do? A Captain Dunn, at about eight o'clock, waved his hand this way to me, several times (illustrating).

Q What did you do then? A I immediately went into the

CASE #1508

door leading into the smoking room, and then through the door leading into the toilet from the smoking room, and went direct to toilet No. 1.

Q How did you go, making a lot of noise? A No, on my tip toes, and walked very quick.

Q Very quick and very quiet? A Yes, sir.

Q And when you got to the door of booth No. 1 what did you do? A I pulled that door open.

Q When you opened the door of booth No. 1 what did you see? A I saw the defendant Wallis sitting on the toilet, leaning over, with his left hand covering his penis and his face towards the partition dividing Toilet No. 1 from Toilet No. 2. Right close to where his mouth was was a hole in this partition, and I could see part of a penis through this hole near the defendant's mouth, and I slapped him in the jaw, and knocked his face away from it. After that, the penis was withdrawn into toilet No. 2.

Q Did you say anything to him? A I called him a dirty bitch, to dress and get up and get out of there.

Q Did you go into the toilet No. 2? A I did.

Q Who did you see there? A I saw Muller.

Q What was he doing, and what position was he in?

A He was standing erect, his back facing me, and he partly facing the partition, and he was with his hand down in front. I don't know whether it was in the fork of his pants, but he was doing something with the fork of his pants; I couldn't see

CASE # 1508

that.

Q What happened then? A I didn't say nothing to Muller. I came out.

Q Where was Wallis while you looked in Muller's booth?

A He was in booth No. 1.

Q You left him in there? A I kept him there.

Q How do you mean you kept him there? A I opened booth No. 2, and I didn't go into booth No. 2. Booth No. 1 is right adjoining, and he didn't come out.

Q You stood by both doors? A Yes, sir.

Q And then did any one else appear upon the scene?

A Captain Dunn came in.

Q He was the next? A He was the next.

Q Did anybody come later? A Bangs, Patrolman Bangs.

Q Any one else? A He came in with patrolman Knutter.

Q When you entered the toilet was any one else in there except these two defendants that you saw? A There was a man came out of toilet No. 3 and left the premises; that is left the toilet room right away.

Q (By Mr. Maliaferro) What is that? A A man left toilet No. 3, and left the toilet room right away.

Q At what stage of the proceedings? A When Captain Dunn was taking Muller from toilet No. 2.

Q Who took Wallis out of No. 1? A I took Wallis out of No. 1.

Q And where did you take him? A Right outside the door

CASE # 1508

of toilet No. 1.

Q Was there any conversation there between this defendant and anybody? A The defendant Wallis said he wanted to speak to me. I said to Captain Dunn, "This man wants to talk to us". Captain Dunn and I stepped back, about five or six feet, from a point where toilet No. 1 was and Wallis asked the captain if he would not leave him go, and not put him under arrest, and Captain Dunn said, "My God, man, what did you do such a thing as that for? Do you see those holes in which men was watching you?" Pointing towards the ceiling, and Wallis said he was the black sheep of a very good family, and that he would not under any circumstances have his people know his predicament. Captain Dunn told him that he was under arrest, and that there could be nothing done there, on account of, as he thought, a felony.

Q What happened then? A A city policeman came into the toilet and placed Wallis under arrest, Wallis and Muller.

Q And where did he take them? A To the Second Precinct police station.

Q Where is that? A Greenwich between Cortlandt and Liberty.

Q How many people accompanied the officer and the two defendants to the station house? A Four, not including the officer; five including the officer.

Q Who were they? A Officer Knutter, Officer Bangs, Captain Dunn and myself.

CASE # 1508

Q You are a lieutenant ~~now~~, are you not? A I was a lieutenant at that time.

Q What happened at the station house? A The pedigree of Wallis and Muller was being taken, when a young boy came in the station house, and had a lot of papers and books in his hand, and he said to the lieutenant that this man, pointing to Wallis, had dropped them on the street.

Q Did you look at them? A I didn't look at them, no, sir.

Q Do you know whether they were given to Wallis? A They were returned to Wallis.

Q Who returned them to him? A The officer, on the lieutenant's orders.

Q That is all you know about this case? A That is all I know.

Q You appeared in the magistrate's Court? A Yes, sir.

Q And you heard the defendant's questioned by the magistrate? A Yes, sir.

Q Don't answer this question until it is ruled upon. It may be objected to. Did you hear what Wallis said in the Magistrate's Court?

MR. TALLAFERRO: I object to that, if the Court please.

THE COURT: Well, in view of the character of the case, although I don't know but what it is proper to receive it, I will exclude it.

Q This window that Captain Dunn was looking in through,

CASE # 1508

if you were inside--

THE COURT: Perhaps you had better wait until the jury has examined the diagram. If there is anything about the diagram the jurors do not understand, and they think it desirable, they may ask questions of the witness with a view of obtaining an explanation.

Q Right alongside of where you put the C is what looks like a wall. Is there any wall there? A There was a box, but not laying in that position.

Q You don't know what that indicates? A No; I don't know what that indicates.

Q The wall was perfectly smooth all the way along?

A Smooth all the way along, with the exception of that box.

Q Was that box a part of the building? A No, sir.

THE FOREMAN OF THE JURY: May I put a question to the witness?

THE COURT: Yes..

THE FOREMAN OF THE JURY: I desire to be informed in regard to the two holes above, for what purpose they were put there, if they were just put there for the purpose of expecting such a case would occur. Also that hole in the side, in the partition dividing the two toilet-stalls.

THE COURT: If there is no objection these questions are submitted to you. Are you able to answer that?

THE WITNESS: Yes, sir. In the toilet, no; I

CASE # 1508

don't know much about the holes in the ceiling.

THE COURT: In other words you are not able to say for what purpose they were put there?

THE WITNESS: Oh, they were put there for the purpose of having people look down from the top of the toilets.

THE COURT: For what purpose were people to look down in the toilets?

THE WITNESS: For just these cases here.

THE COURT: And for what purpose was the hole put in the side between the toilets?

THE WITNESS: Them holes were not put there by the railroad company. I know that positively. But, from my experience they were put there by these--

THE COURT: No; I won't allow that. In other words, you do not know who it was that made the holes between the toilets. Now, "Yes" or "No" to that.

THE WITNESS: No.

THE COURT: You did not see it made?

THE WITNESS: No, sir.

THE COURT: I will strike out the answer that it was not made by the railroad company.

Q. When was the first time that you saw the hole between booths 1 and 2? A. On the 22nd of August.

Q. That is two days before this crime? A. Yes, sir.

Q. When was the first time that you knew there were two

CASE # 1508

holes in the ceiling? A On the night of the 24th of August.

Q Do you know who bored those holes? A I was told who bored them.

MR. MC CORMICK: That is all.

BY THE ELEVENTH JUROR:

Q Did the company put those holes there expecting there was any crimes being committed there? A On complaints of these crimes being committed there.

BY THE FIFTH JUROR:

Q Had you ever seen this defendant before that night?

A Not prior to August 24th, 1911.

BY MR. Mc CORMICK:

Q Had you seen him before you saw him committing the crime? A No, sir, I had not.

THE FOREMAN OF THE JURY: Did I understand from the testimony two watchers were put up there to look through those two holes at the time?

THE COURT: There is testimony, I believe, to that effect, yes.

MR. Mc CORMICK: Your witness.

CROSS EXAMINATION BY MR. TALIAFERRO:

Q Mr. Carney, as I understand you, about the time that Captain Dunn, after he had gotten down off this ladder, come around where this window was, he came around into the toilet, did he? A After giving me the signal to go into the toilet room.

Q You went in and then he came in after you? A He came

CASE # 1508

in after me.

Q And when did the man in toilet No. 3 get there? A I didn't get that.

Q I will withdraw it. I understood you to say that, at the time Mr. Dunn was going into toilet No. 1 the man who was in No. 3 left the toilet? A At the time that Captain Dunn was pulling Muller from Toilet No. 3 this man in toilet No. 3 came out and left the toilet room, yes, sir.

Q Where were you when he left? A When he left the Toilet room?

Q The man in No. 3? A In No. 3?

Q Yes. A I was standing at door No. 1.

Q Did you see this man in No. 3 leave? A I saw this man in No. 3 leave the toilet room.

Q Did you know who he was? A No, sir, I did not.

Q Did you know whether he was an employe or detective or special agent of the Pennsylvania Railroad? A No, sir, I do not.

Q Do you summons him as a witness? A No, sir.

Q Did you detain him in any way? A No, sir.

Q Said nothing to him? A No, sir.

Q Made no investigation as to who he was? A No, sir, I did not.

Q Didn't take his address or his home, or his business, or anything of that kind? A No, sir.

Q You stated a while ago that the defendant stated that

CASE # 1508

he was the black sheep of the family? A II did.

Q He made that statement to you, did he? A To Captain Dunn and I.

Q You were ~~examined~~ in the Magistrate's Court? A Yes, sir.

Q Why didn't you make that statement there? A Why didn't I make that statement?

Q Yes. A I gave all the particulars.

Q I am not asking you what particulars you gave; I am asking you why you did not make that statement there.

MR. McCORMICK: There is no evidence that he did not. I object to the question.

Q I ask you to state, if, in the Magistrate's Court, the presiding officer did not ask you to state what was said there, and if you did not make a statement, and whether you said anything about his saying he was the black sheep of the family? A I can't remember that, counselor, ~~whether~~ whether I did or not.

Q How is it you can remember the defendant said that to you, and you can't remember whether you made the statement before the magistrate. How is that? A I remember the particulars very well.

Q Which particulars? A The particulars occurring on the night of August 24th.

Q Why is it you can't remember what took place before the magistrate? A I remember the complaint.

CASE #1508

Q You were the only witness examined there, weren't you?

A I was the complaining witness.

Q Complaining witness? A Yes, sir.

Q And, as a matter of fact, he did tell you he was the black sheep of the family? A On August 24th in the toilet.

Q Why didn't you state that to the Magistrate? A I don't know whether I did, or did not, I am saying.

Q Do you know whether you did or not?

THE COURT: He just said he did not know whether he did or did not.

Q If you did not why did you not?

MR. McCORMICK: I object to that.

THE COURT: Objection sustained.

MR. TALIAPERO: Exception.

Q Mr. Carney, after the arrest you and Captain Dunn went to one side with the defendant, didn't you? A On his request.

Q On his request? A The defendant's request.

Q Did you say anything to him about money? A Did I say anything about money?

Q About money? A No.

Q Did you ask him how he was fixed? A No, sir.

Q Did you ask him whether he had any money or not?

A No, sir.

Q Will you swear positively that you did not ask him

CASE 1508

whether he had any money, or not? A I swear to that.

Q Did you ask him how his father was fixed, and whether he had any money or not? A No, sir.

Q You made no such inquiry? A Not as to money, no, sir.

THE COURT: Well, we will take a recess now.

Gentlemen of the jury---

MR. TALIAFERRO: Will your Honor just permit me a moment?

THE COURT: Certainly.

MR. TALIAFERRO: If your Honor pleases, I have been very unwell last night, and yesterday, and I did not get to sleep until after two o'clock this morning. Would your Honor object, if the District Attorney does not object, to adjourning this case until Monday morning?

MR. McFARLANE: I think that is a reasonable request.

THE COURT: The request is granted.

Gentlemen of the jury, you are admonished not to talk among yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you. You are excused until Monday morning at half past ten o'clock.

(The Court accordingly took a recess until Monday, March 12th, 1912, at ten thirty A. M.)

CASE #1508

THE PEOPLE, &c against GEORGE WALLIS.

New York, Monday, March 18th, 1912.

TRIAL CONTINUED.

THE COURT: Mr. McCormick, if you want to call Mr. Voelckening, I have no doubt Col. Taliaferro will consent to the suspension of the examination of this witness. Do you want to call Mr. Voelckening?

MR. McCORMICK: Yes, sir, I will call Mr. Voelckening.

THE COURT: Col. Taliaferro, will you consent to a suspension of the examination of the witness on the stand?

MR. TALIAFERRO: Yes, sir.

WALTER H. VOELCKENING, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your name? A Walter H. Voelckening.

Q Where do you live? A 116 Decatur Street, Brooklyn.

Q What is your business? A I am an architect.

Q And how long have you been an architect? A Fifteen years.

Q Have you been doing any work for the District Attorney in the last few years? A Yes, sir.

Q How long? A Since June 1st, 1906.

CASE #1508

Q What kind of work? A Preparing diagrams, the scenes of homicide cases and other locations that might be required.

Q Have you recently made a diagram showing the smoking room, and toilet room of the Cortlandt Street ferry house of the Pennsylvania Railroad Company? A I have.

Q In New York County? A I have.

Q Is this the diagram that you made (handing same to witness)? A That is the diagram I made.

Q Before you made this diagram did you make any measurements? A I did.

Q Of what? A Of the smoking room and the toilet room and the dock adjoining the two.

Q And the measurements that you made are indicated on this diagram, in figures? A They are, yes.

Q I ask you to take that diagram and explain--

THE COURT: Colonel, if you would like to stand around here while he is explaining it, you may do so.

Q May I ask what this is, the transparent paper? A The tracing represents the floor plan directly over the first two toilets, showing a hole in the ceiling.

Q On the floor above? A On the floor above.

Q Will you explain what you did when you went there, in the way of making measurements? A I made the measurements ~~xxx~~ showing the physical dimensions of the smoking room, the toilet room, the position of the urinals, windows, entrances to the toilets, the height of the partitions, sizes of the windows

CASE #1508

and the width and the length of the dock, and the location of the tool box outside on the dock.

Q And those are correct measurements? A And those are correct measurements.

Q On the outside, you have marked a brown space here, with the words "tool box". How high is that tool box?

A Well, that tool box has a sloping top; it slopes front and rear from a total height in the centre of three feet ten.

Q Will you turn that to the jury so that they can see where that is indicated on the diagram? A This small drawing is a side view, the end view of this tool box. This represents the front of it. That line on this plan represents what would be known as the ridge, the highest point (indicating on diagram). It slopes both ways; that is, so when it rains the water won't run into the box.

Q There is no wall built outside here, is there? A A wall?

Q Yes; there seems to be one indicated on another diagram. A No, there is no wall there; that is the rear of the building.

Q What is there out there where that tool box is built? A This is an open dock.

Q Or bulkhead? A Towards the water end of the bulkhead. Then there is a storeroom here, or boiler room, but there is a clear space of almost fourteen feet from the storeroom to the rear of the ferry house.

CASE # 1508

Q That is all open space? A All open space.

Q (By the Court) Suppose a person stepped from this part that is colored yellow or brown, and is marked "tool box" in that direction, would he step off into the water? A Oh, no, you are stepping off on to the dock. The water begins here (indicating on diagram).

Q A person standing at the northerly end of the tool box could see over the top of it? A Well, if the person is over three feet ten high, he could.

MR. MCCORMACK: I offer the diagram in evidence.

MR. HALLAMER: That is to say the postboard.

MR. MCCORMACK: Both.

MR. HALLAMER: I don't think he is qualified as an expert.

MR. MCCORMACK: Well, I am going to call the part on the diagram paper.

MR. MCCORMACK: I think he says it represents--

THE COURT:

Q What did you do in connection with measurements upstairs above the floor in which toilets are located? Where did you go, and what did you do? A I went up with Captain Dunn. He unlocked a storeroom directly over the toilet floor.

Q And you entered? A I entered.

Q And, having entered it, you had a measurement with

me. A I did.

Q And you measured from what point to what point? A I

CASE # 1508

measured from the openings, from the face of the wall to the centre of a hole in the cement floor, from both corners of the building. Then I measured the opening in the cement floor, which was 12 by 12 1/4 inches. Then I measured the depth of the cement floor, the depth of the rough floor, the depth of the floor beams, and the thickness of the wooden ceiling which formed the ceiling of the toilet room directly underneath.

Q Now, from what points did you take your measurements underneath? A I took the measurements of the size of the hole, and the depth of the beams and the thickness of the floor from the second story, reaching through the hole. Then the height of the ceiling I secured by having Captain Dunn drop the tape through to the floor below.

THE COURT: I think I will allow that. The paste-board and the paper on top of it received in evidence and marked People's Exhibit No. 5.

(Same received in evidence and marked People's Exhibit No. 5 of this date.)

BY MR. McCORMICK:

Q When you were on the second floor, did you look down through the hole in the floor? A I did.

Q What could you see? A Could see two toilets.

Q All of ~~these~~ both toilets? A Oh, yes.

MR. McCORMICK: Your witness.

CASE # 1508

CROSS EXAMINATION BY MR. TALLAFERRO:

Q Your name is Voelckening? A Yes, sir.

Q Now, I see you have the front elevation of toilets Nos. one, two, three and four, where I put my finger (indicating on diagram)? A Yes.

Q That is correct, is it? A That is correct.

Q Did you see a paper box there containing toilet paper in No. one? A On the partition?

Q Yes. A Yes, yes, sir.

Q I didn't see it here? A I have indicated it on the diagram, it is on the section view.

Q According to your diagram here, it is 23 1/4 inches from the front partition, the door on No. One to this toilet paper box, is that correct? A Well, if it is as indicated there, it is correct. Is it 23 1/2, or one foot?

Q 23 1/2 inches? A Yes.

Q You have here on your diagram what indicates a place sawed out of the partition between No. One and No. Two?

A I did not catch your question, counselor.

Q You have here what indicates a space that was sawed out of the partition between No. One and No. Two? A I have.

Q That is the distance between the edge of that toilet box and that space? A It is--

Q (By Mr. McCormick) Do you want to refresh your recollection? A Well, I know that measurement. It is about 1 9/16. I have marked it 1 1/2 inches.

CASE #1508

Q 1 1/2 inches? A Yes, it varies on account of that hole not being exactly true.

Q (By the Court) What is the thickness of the wood of the partition between the toilets? A 7/8 of an inch.

MR. TASSIAPERRO: We have a part of that partition here.

Q Mr. Voelckening, I ask you this question: If a person were standing in the centre of the lower right hand corner of the window, or the lower right hand window that out. There are four windows looking out on the balcony there on the deck? A Yes, sir.

Q From the toilet room? A From the toilet room.

MR. McCOY: One window with four panes.

THE WITNESS: No; there are four windows.

Q Two above and two below? A Well, a balcony, a counselor. There are three windows that have eight lights, and one window that has four lights; that is the one directly over the toilets.

Q The one that overlooks Toilet No. One? A Yes, sir.

Q That is, two window panes above, and two window panes below? A Yes, sir.

Q And the distance from the lower part of that window pane to the floor is what? A Well, from the sill of the window to the floor is 2 feet 2 inches.

CASE #1508

Q From the sill of the window to the floor is 8 feet 2 inches? A Yes, sir.

Q Now, if a person were to stand in the centre of the lower right hand window pane which overlooks Toilet No. One they would be directly opposite the paper box, wouldn't they? A If they were in the very centre?

Q Step here and you can see? A (Witness approaches table reserved for counsel for the defense.)

Q If a person were standing in the centre of the lower right hand pane of the glass overlooking No. One and looking directly forward, they would be exactly opposite the paper box on the partition between One and Two, wouldn't they?

A Is it to the centre of the paper box?

Q Yes. A It is not.

THE COURT: The question as put by Col. Taliaferro, as I take it, means a person whose face is situated in the centre of the lower right hand pane; isn't that so?

MR. TALIAFERRO: Yes, sir.

THE COURT: You understand that now, do you, Mr. Voelckening?

THE WITNESS: Yes; I understand.

MR. McCORMICK: And the answer is "No."

Q How far from the centre of the box would a direct line from the centre of the lower right hand window from Toilet No. One strike? A It would be about six inches from the centre of the first light of glass to the centre of the paper box.

CASE # 1508

THE COURT: Pardon me; I don't understand that.

Now, supposing you had a string that started from the centre of the paper box, and you wanted to carry that string, and could carry it, in a perfectly straight line to the centre of the lower right hand pane, what would be the distance?

THE WITNESS: That was not the question, judge.

(The stenographer reads question as follows: "How far from the centre of the box would a direct line from the centre of the lower right hand window from toilet No. One strike?")

MR. McCORMICK: I understand, if a horizontal line is drawn from the pane of glass.

BY THE COURT:

Q Now, I will put this question to you, Mr. Witness. Suppose you had a string, one end of which was in the immediate centre of the lower right hand pane, and you could project that string in a straight line to the centre of the paper box, what would be the distance? A The distance from the centre of the lower light to the centre of the paper box would be about three foot five inches. I want to correct that. We have two angles. We have got to come down, and we have got to go across. That would be about seven foot six from the centre of the light in a straight line to the centre of the box.

Q And that is allowing for both angles? A Both angles.

CASE # 1508

We are going down, and we are going across.

BY MR. TALIAFERRO:

Q About 7 feet 6? A About 7 feet 6.

Q That is a very difficult dimension to calculate from a plain drawing.

Q (By the Court) That is approximately correct? A That is approximately correct, yes, sir.

Q You mean by that that is your best knowledge? A I can secure the exact distance, if you wish it.

Q (By the Court) In other words it would take a string about 7 feet 6 inches long to go that distance? A Yes, sir.

Q Now, taking a direct line from the centre of the window and running at right angles with the lower right hand window from toilet No. One, where would it strike the paper box?

MR. McCORMICK: There is no evidence that it would strike the paper box.

MR. TALIAFERRO: I am assuming that it would.

MR. McCORMICK: He has no right to assume something that could not be in all probability. A straight line drawn from the centre of the window, and perpendicular to it, would not strike the paper box.

MR. TALIAFERRO: I insist that it would strike it.

THE COURT: All right.

Q Drawing a line from the centre of the lower right hand window

MR. TALIAFERRO: Yes, sir.

CASE # 1508

hand pane?

Q (Continuing) Yes; and extending at right angles in the direction of the paper box, where would it strike the paper box? A It would not touch the paper box.

BY THE COURT:

Q In other words a line drawn at right angles from the centre of the lower right hand pane would not touch the paper box at all? A It would pass over the top of the toilet partition.

BY MR. TALIAFERRO:

Q Suppose you were to draw it at right angles and in a downward course toward the paper box, where would it strike?

MR. McCORMICK: He could not.

BY THE COURT:

Q Suppose you started to draw a line from a point that was immediately underneath the centre of the lower right hand pane, being a point on the same level as the level of the centre of the paper box, and from that point, that is to say, at a point that was immediately underneath the centre of the lower right hand pane, you projected a line in a right angle from that point, where would it strike? Would it strike the paper box, or would it strike the side of the paper box, and if so to which side, and how far from the paper box? A It would not strike the paper box.

BY MR. TALIAFERRO:

Q Then such a line would leave the paper box to the right

CASE # 1508

instead of on a straight view from the window? A That is from the right of this original point where the line struck the partition.

Q The paper box would be to the right? A Yes, sir.

Q Now, Mr. Voelckening, how long were you down there on Saturday? A I arrived there about twenty minutes past eleven, I guess; it was twenty five perhaps, and I stayed there until ten minutes of two.

Q And who was with you all that time? A Captain Dunn.

Q He was a witness here in this case? A I imagine so.

BY THE COURT:

Q Mr. Voelckening, is there any physical object that intercepts the view between a point in the middle of the lower right hand pane of the window and the hole that you have described in the partition between the two toilets? A No, sir.

Q In other words a person having his face on the outside of the lower right hand pane of that window, and looking in that direction e- the direction of the hole between the two toilets would not have his view of that hole intercepted by any physical object? The hole can be seen? A The hole can be seen.

BY MR. TALIAFERRO:

Q Now, in this diagram, you have indicated where the holes are in the ceiling, have you? A Oh, yes, they are on the board diagram, and the floor plan shows that on the second story.

CASE #1508

Q (By Mr. McCormick) On the tissue paper? A Both of them; that is the plan of the second story, and the section and elevation shows the holes through the floor.

Q According to your diagram there, you show a hole twelve by twelve something? A Twelve by twelve and one-quarter, I think.

Q And that is all you do show? A Yes, that is the hole I found in the partition.

Q (By the Court) You mean the partition or the ceiling of the floor? A Well, both. There was an eight by nine, or eight and a half by nine and a half hole in the ceiling, and there was a twelve by twelve hole in the partition.

Q The diagram don't show where the holes on this board which I am showing you, marked People's Exhibit No. 3 are? A I never saw those before.

Q Never saw that before? A No.

Q Mr. Voelckening, in the hole in the ceiling, or in the floor above, which you designate here as being 12 by 12 something-- A That is concrete.

Q Isn't there a cross beam three by four inches that supports the two cross beams or sleepers upon the window side of this hole? A Well, there is a small cleat there, but it is not three by four.

Q Are you positive it is not? A I didn't measure it, but I am pretty sure it is not three by four.

Q You didn't? A No; I would have measured it had it b-

CASE # 1508

structed my view.

Q You didn't make any experiments while you were down ~~z~~ there? A In what regard?

Q You simply made measurements? A I looked through the hole and saw the toilets. Captain Dunn asked me to do that.

Q The hole in the ceiling is just the size of this board, wasn't it? A Well, if that is the board that was taken out, yes.

You

Q Could see it easily? A I had no trouble.

Q Did you get up in that window and look down towards ~~the~~ where this hole in the partition was? A Looked through the light of glass that has been designated?

Q Yes. A I did not.

Q Don't you know that it is a matter of fact that if a person the size of the defendant in this case was sitting upon the seat in Toilet No. 1 that you could not stand in the centre of the lower right hand glass and look down towards that hole and see the hole when he was sitting on the toilet?

A No, I don't know whether it is a fact or not. I made no experiments.

Q You didn't experiment to see whether or not it was a physical fact, whether it could be possibly done physically?

A I did not.

BY THE COURT:

Q I thought you stated to me a few minutes ago that there

CASE # 1508

was a physical object that would intercept the view of a person whose face was in the centre of the lower right hand pane, and the centre of the paper box? A When I understood you to say physical object--

Q I should say the hole in the partition? A I understood you to mean a physical substance, not a person.

Q The answer that you gave is based on your measurements and is not based on your own personal observation looking through the lower right hand pane? A Yes, sir. It is based on the measurements.

Q Based on the measurements? A Yes, sir.

Q In other words you made certain measurements and you drew certain conclusions from those measurements? A Yes, sir.

Q But you did not yourself look through the lower right hand pane at the hole in the partition? A No, I did not.

T H O M A S J . C A R N E Y resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. TALIAFERRO:

Q Mr. Carney, how long had you been standing outside the door of the smoking room when Captain Dunn waved his hand to you? A I was very near an hour.

Q Very near an hour? A Very near an hour.

Q You did not see the defendant go in that toilet at all, did you? A No, sir, I did not.

Q And you did not see George [redacted] in? A No, sir, I

CASE #1508

did not.

Q You saw neither one of those parties go into that toilet? A No, sir.

Q Mr. Carney, do you know a gentleman by the name of William B. Kelly, who used to be employed in the same line of business that you were, by the Pennsylvania? A William P.?

Q William B.? A Oh, B. Kelly, yes, sir.

MR. MCCORMICK: Objected to as irrelevant.

THE COURT: I will allow it.

Q What? A Yes, I know William B. Kelly.

Q He is a stout blonde gentleman, isn't he?

MR. MCCORMICK: Objected to.

THE COURT: I will allow it.

A A stout gentleman, yes, sir.

Q Do you remember whether or not on Saturday, August 26th, about 5:15 in the afternoon you had a talk with him on the car which you boarded at the Brooklyn Bridge? A No, sir, I had not.

MR. MCCORMICK: What date was that?

MR. TALIAFERRO: Saturday, August 26th.

THE WITNESS: Saturday, August 26th, at a car-- on a car at the Brooklyn Bridge?

Q That you boarded at the Brooklyn Bridge, going over to Brooklyn?

THE COURT: Did you have a talk with the Mr. Kelly that he referred to on the date that has been named or

CASE #1508

suggested in the question, while you and he were ~~on~~ the car going over the Brooklyn Bridge?

THE WITNESS: I was not on a car going over the Brooklyn Bridge on Saturday, August 26th, with William B. Kelly. I was not on that car.

Q You were not? A Or any other car.

Q Then, you were on no car in Brooklyn, or on the Brooklyn Bridge, with William B. Kelly, the gentleman I have mentioned on August 26th? A On August 26th, no, sir.

Q Weren't you on that car at the time I have indicated, and didn't you say to him "We have got a brakeman on the Pennsylvania Railroad arrested".

MR. McCORMICK: Objected to; he says he was not on the car, and did not see the man that day.

Q (Continuing) "Who was arrested Thursday night, and we haven't got him right; we have nothing against him".

THE COURT: I will allow it.

A No, sir, not on Saturday August 26th.

Q Did you at any time make that statement? A I rode to Brooklyn with ~~the~~ lieutenant Kelly on Friday evening, which was the day we came from the Magistrate's Court.

Q And that was the day after this arrest? A After this arrest, yes, sir.

Q You went over to Brooklyn with this same man, Mr. Kelly? A I went over to Brooklyn with this same man, Mr. Kelly,

CASE #1508

Friday evening.

Q Then on Friday evening, on board of that car going to Brooklyn, did you state to Kelly, "We have got a brakeman of the Pennsylvania Railroad arrested, who was arrested Thursday night, but we haven't got him right? A I never made such a remark to Mr. Kelly.

Q And did you state at the same time, "We have nothing against him?" A No, I did not.

Q And did you not state, "If we had known he was a brakeman of the Pennsylvania Railroad we would not have arrested him?" A No, sir, I did not.

Q Do you know a man by the name of Thomas Weiss? A Thomas A. Weiss?

Q Yes. A Yes, sir, I know him.

Q Do you remember going acrosss the Cortlandt Street ferry after September 2nd, or about that time, around the noon hour, going from New York to Jersey City, and meeting with Weiss on the ferry boat? A No, sir, I do not.

Q Do you remember at any time about that time going over the ferry at Cortlandt Street and meeting Weiss and having a talk with him about this case? A No, sir.

Q Did you not at about the time you have indicated and at the place I have indicated, have a conversation with Weiss in substance as follows: "Didn't Weiss say, "Carney, you look bad; what is the trouble?" And didn't you say, "Everything;" and didn't you further say I have got a case against

CASE #1508

a man who was a brakeman on the Pennsylvania Railroad, and I have not absolutely nothing against the man, and it bothers me"? A I have not spoken to Thomas Weiss since last August, since he was discharged from the Pennsylvania Railroad.

Q Well, you say he was discharged; how do you know he was discharged? A We were so informed by our superior.

MR. TALIAFERRO: Objected to, and I move to strike it out.

THE COURT: Strike out, "Since he was discharged". You have not had a talk with him since last August?

THE WITNESS: Since last August.

Q You have not seen him since what time in August? A Oh, I should judge about around the first part of August.

Q Then you have not seen him to have a talk with him on the ferry boat crossing the Hudson River, nor any other place since this arrest took place? A I have not spoken to the gentleman since he worked with me on Pier 28. That is over two years ago.

Q Over two years ago? A Yes, sir.

MR. TALIAFERRO: That is all.

RE DIRECT EXAMINATION BY MR. MC CORMICK:

Q I would like to have you take that diagram and look at it, People's Exhibit No. 5 and show on this diagram where you were standing when Dunn waved his hand.

THE COURT: Make a mark, your initial.

THE WITNESS: T. J. C.

CASE # 1508

THE COURT: Yes.

(The witness marks "T. J. C." on diagram.)

THE COURT: Now, you mean by that that you were standing with your feet on the dock, or standing on top of the tool box.

THE WITNESS: I was standing with my feet on the dock, and leaning against the corner of the tool box.

Q There is no wall out there, or anything to obstruct your view of Dunn? A No, sir.

Q And how high was the tool box? A It came up about there on me (indicating about the waist line).

BY THE COURT:

Q Will you make a mark on that diagram indicating where Dunn was standing at the time you were standing at the point where you put your initials? Now, make a little cross indicating where Dunn was standing? A I would say approximately about there (marking with X mark on diagram). There was a window there (indicating on diagram). He was not on the dock; he was standing on a lot of mortar boards, which was built up high there.

Q This is the window (indicating on diagram). You put him against a blank wall? A The window is up eight feet above that. I am not very much used to diagrams; if this is the window that is looking in the toilet, he would be standing there (indicating on diagram).

Q In other words, the cross that you have now made in

CASE # 1508

front of the window represents where Dunn was standing at the time? A Yes, sir.

RE CROSS EXAMINATION BY MR. TALLAFERRO:

Q Mr. Carney, when Dunn waved his hand to you, did you immediately enter the toilet room? A Right, sir.

Q Did you go rapidly or did you go slowly? A I stopped with a very quick stop, very quick.

Q And what did you do when you got into the toilet room? A I looked for a moment at Dunn, sir.

Q Now I am going to open the door of the toilet room and you will see what the door is like. It is a door that is only in Room No. 2, and it is a door that is not in Room No. 1. In Room No. 2, it is a door that is not in Room No. 1.

Q Now I am going to open the door of the toilet room and you will see what the door is like. It is a door that is only in Room No. 2, and it is a door that is not in Room No. 1.

Q Now I am going to open the door of the toilet room and you will see what the door is like. It is a door that is only in Room No. 2, and it is a door that is not in Room No. 1.

Q Can you tell me with your finger on that window the course that you pursued in going from the point where you have made your initials to the point you saw after Dunn had waved his hand, as you say? A Yes, sir. I started from there through the door leading into the smoking room, and reached this door leading to the toilet, and in the centre of the toilet until I got to this corner of the wash basin, where I got up on the wall, and got to the point opposite this door. I then went in with my left hand, and went in with my

CASE #1508

right hand.

Q Were you the first of the employees of the Pennsylvania Railroad to reach a position in front of that toilet? A Yes, sir.

Q Do you recall who it was of the employees of the road that got to that toilet next? A Yes--

Q "Yes" to "next" to that? A Yes, sir.

Q The next man that came in to the toilet where I was?

Q The next man that got to the point in front of the toilet about where you were, was was an employee of the road?

A Captain Dunn.

Q And, so far as you know, he came across the toilet room through the same door by which you had entered it?

A Yes, sir.

BY MR. TALIAFERRO:

Q Mr. Carney, what was the distance from the point where you were standing when Captain Dunn waved his hand to you to the door of Toilet One?

THE COURT: You mean following the course that had to be taken by this witness himself?

MR. TALIAFERRO: Yes, you going the course you went?

A I took measurements of that, if I can refresh my memory by looking at my memorandum.

Q Look at your memorandum? A (After examining paper) About thirty three feet.

CASE # 1508

Q About thirty-three feet? A Yes, sir.

Q That is you travelled a distance of thirty three feet? A I traveled from the ~~initial~~ time I got the signal until I got to booth No. 1 33 feet about.

Q And when you got to the door of booth No. 1 did you go in immediately? A Yes, sir.

Q Just as quickly as I can go through? A Yes, sir.

THE COURT: Did you travel about thirty three feet on

THE WITNESS: On the main floor, I did.

Q About what length of time did it take you to get to the count, and when I have counted the clock, one, two, three, four, five, six-- A That is about it.

Q About six seconds? A About five or six seconds.

THE COURT: Did you find the door that led from the dock into the smoking room when you got to it open or closed?

A It was partly open.

Q Then from the point--

THE COURT: Pardon me a moment. Did you find the door leading from the smoking room into the toilet when you got to it open, or closed?

THE WITNESS: That was open.

Q There was no door to obstruct your passage? A Yes, the door leading from the dock to the smoking room was partly closed. I had to open that.

Q It took you six seconds in the rapid gait you were

CASE #1508

travelling from the time that you left the point where you were when Dunn moved to you to get to ~~the~~ door No. 1 of No. 1 toilet? A About six seconds, to reach the door of No. 1 booth.

Q You were examined before the Magistrate in this case, were you not? A Yes, sir.

Q I ask you if this question was not asked you, page 3: "You saw it? A Yes, sir. He had Muller's penis in his mouth fully a minute and a half when I opened the door." Did you swear to that? A In the Magistrate's Court?

Q Yes. A I can't say whether I did, or did not, counsel-
or. I can't remember that.

Q From the moment that you moved from the point that you have indicated on that diagram, with initials until the time you opened the door leading into toilet No. One, were you able to see inside of that toilet? A The toilet door, yes, sir.

Q From the time that you left the point at the corner of the toolbox indicated on that diagram by your initials until the moment that you stood in front of the door opening into ~~the~~ toilet No. One, were you able to see inside of toilet No. One? A Yes, sir, when I reached there.

Q Where were you at the time you first got a view inside of toilet One? A I was directly against the door of booth No. One.

Q In other words you got that view when you got to that

CASE # 1508

door? A To that door, yes, sir.

Q But you had no view of the inside of that toilet until you had reached that door? A Until I had reached that door.

BY MR. TALIAFERRO:

Q I ask you again if you did not swear before the Magistrate, Magistrate Corrigan, on August 25th, 1911, in substance as follows: "He had Muller's penis in his mouth fully a minute and a half when I opened the door." Didn't you swear to that? A Did I swear to that?

Q Yes. A I can't remember that question being asked me; I can't remember whether I did or did not, counselor.

Q If you did swear it, was it true? A Was it true?

Q Yes. A No, I don't think it would be.

Q Then, if you swore to that, it was not true? A If I said it was a minute and a half?

Q Yes. A It was no minute and a half, no.

Q If you did swear that, it was not true, was it? A Not a minute and a half, no, that was not true.

Q It was not true if you did swear it, was it? A It was not true, no, sir.

Q And you now swear that it was six seconds from the time--

THE COURT: He said it was about six seconds.

MR. TALIAFERRO: That is all.

THE COURT: How long do you estimate you were at

CASE # 1508

248

the door of toilet One before you opened it?

THE WITNESS: Oh, I was fully-- I was about as long again, as getting there, about six seconds.

MR. TALIAFERRO: The witness answered, "As quick as that (snapping fingers). He said "Immediately. I said "As quick as that ?" (snapping fingers), and he said, "Yes".

THE WITNESS: You asked me how quick I opened the door.

MR. TALIAFERRO: No, I did not. You knew what I asked. I asked how long it was before you opened the door, and you said, "Immediately", and I repeated the language, "Immediately", and you said, "Yes."

THE COURT: Well, I wanted to get at the truth, as nearly as possible.

BY MR. McCORMICK:

Q How long did you stand at the door? A At the toilet door?

Q Yes. A About five or six seconds. I stood until I saw Captain Dunn leave the window. He was up there.

Q He was still at the window? A He was still at the window looking through the broken glass.

THE COURT: Do you mean to say when you got to the toilet door, Dunn was still at the window?

THE WITNESS: He was still at the window, yes, sir.

CASE # 1508

Q You were questioned by the defendant's lawyer about a conversation with the defendant's father? Did you talk with the defendant's father after this occurred? ~~At that time~~

MR. TALIAFERRO: I never asked him any question about the defendant's father.

MR. McCORMICK: I thought you did.

MR. TALIAFERRO: No.

Q Did you ever talk with the defendant's father at all?

A Never said a word to him.

BY MR. TALIAFERRO:

Q Mr. Carney, you have said a moment ago it was five or six seconds that you stopped at the door of No. 1? A About that, counselor.

Q Didn't you tell me a few moments ago, that when you got to the door of No. 1 you opened it immediately, and didn't I ask you if it was as quick as that (snapping fingers)? A That the door opened as quick as that, that there was no hesitation.

Q That is what you meant, is it? A Yes, sir.

BY THE COURT:

Q Mr. Carney, do the doors of those toilets extend down to the floor? A No, sir.

Q About what is the distance from the floor to the bottom of the toilet door? A well, I ~~think~~ have the measurement of that too.

Q Is it shown on the diagram?

CASE # 1508

MR. TALIAFERRO: Do you mean from the door of the toilet?

THE COURT: I want to know the distance from the bottom of the toilet door to the floor.

Q On that day, Mr. Witness, about what was the distance from the bottom of the toilet door of toilet No. One to the floor? A About six inches.

Q That is to say the bottom of the door was only about six inches from the floor? A About six inches from the floor.

Q And the top of the door was about how high from the floor? Is that shown on the diagram?

MR. McCORMICK: It is not on this diagram. I believe Col. Taliaferro has a diagram.

MR. TALIAFERRO: No, our diagram was made after the doors were taken off.

MR. McCORMICK: The photograph, your Honor, will show it.

Q The doors went right up-- their tops were flush up against the frame? A The upper jamb, yes. Seven feet, I have here.

Q Do you know from observation at all how much of the floor space in the front of the toilets can be seen by a person sitting on the toilet seat and looking under the opening?

A I should judge about 24 inches, right from the edge of the door, about 24 inches.

Q That is, if a person sitting on the seat in the

CASE #1508

ordinary posture could see about 34 inches on the other side of the door? A Yes, sir.

Q You could see the foot, in other words of a person who came within two feet of the door? A Yes, sir.

JOHN R. NUTTER, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your name? A John R. Nutter.

Q Where do you live? A Cincinnati, Ohio.

Q What is your occupation? A Special officer.

Q On the 24th of August, 1911, were you in the employ of the Pennsylvania Railroad? A Yes, sir.

Q Where were you about seven o'clock that evening?

A In the ferry house at the foot of Cortlandt Street, New York.

Q On what floor? A On the upper floor, what is known as the abandoned toilet.

Q I can't hear you. A On the upper floor, in what is known as the abandoned toilet.

Q What was the condition of the floor of that room?

A There was a hole out in the cement flooring.

Q About what was the size of this hole out in the cement floor? A I never measured it; I should judge about eight by ten.

Q About the size of that board (indicating People's

CASE #1508

Exhibit No. 3)? A Yes, sir.

Q What was the condition of the ceiling just below the floor? A There were two holes bored in the ceiling.

Q How far apart were those holes? A About three or four inches.

Q About how far from the centre of one to the centre of the other? A From the centre of the holes or the centre of the space between the holes?

Q From the centre of one hole to the centre of the other hole? A I should estimate about six inches.

Q And, as you looked down through these holes, could you see Toilet No. 1, meaning by that the one nearest to the bulkhead? A Yes, sir.

Q I mean to the dock, outside? A Yes, sir.

Q And did you look through one hole or both? A At various times I looked through each of the two holes.

Q Was anybody else there with you? A Yes, sir.

Q Who? A Owen J. Banks.

Q Who is he? A He is a special officer of the Pennsylvania Railroad.

Q That evening did you see this defendant? A I did.

Q Had you ever seen him before? A Not to my knowledge.

Q Did you see a man named Muller at about the same time?

A I did.

Q When you saw the first one that you told me about.

Q When you saw the second one that you told me about.

Q When you saw the third one that you told me about.

CASE #1508

Q Do you know about what time that was? A Not exact-
ly. It was between half past seven and a quarter of eight.

Q Tell us all that you saw Muller do the first time you saw him? A The first time I observed Muller he was in booth No. 1, and after being in there for a few moments, or a few minutes, I don't know just how long, he went out of booth No. One, and ~~xx~~ in another short space of time he went into booth No. 2.

BY THE COURT:

Q Booth No. 2 is which booth? A That is the second booth from the wall.

Q From the window? A Yes, sir. We designate them One, two, Three and Four. The second booth from the window, and when he went into Booth No. Two, after being in No. One, I called Bangs' attention to the fact that this man had been in No. One.

MR. TALIAFERRO: Objected to.

THE COURT: Objection sustained. Strike it out.

A (Continuing) I saw him go into No. 2, and I asked the time.

Q What? A I asked the time.

THE COURT: Strike that out. Don't you tell us anything you said to anybody. You tell us exactly what you did.

THE WITNESS: Yes, sir. Well, after he went into booth No. Two and was in there a few minutes, I noticed this defendant come into booth No. One, and they were in

CASE # 1508

there in the neighborhood of ten minutes when I saw Muller take a piece of paper off the toilet box or the holder and wet it and stick it on a hole between toilets Two and Three, and I was curious to know what he was doing that for, and I watched him, and after he had done that--

MR. TALIAFERRO: Objected to.

THE COURT: Strike out "I was curious".

THE WITNESS: I watched him, and after he had done that, then I was watching the man in No. One.

BY THE COURT: I am going to interrupt you just a moment. When you first laid eyes on the man you say is the defendant here, where was he? A In Booth No. One.

Q Was he already inside of the closet or was he on the outside of the closet? A Inside the closet.

Q In other words you didn't see him until he had gotten inside of closet One, is that so? A Well, I saw him going into Toilet No. One.

Q You saw him in the act of opening the door? A In the act of going in, yes, sir.

Q In the act of passing through? A Passing through the door, yes, sir.

Q These doors open out? A Open out.

Q So that A and after they had been in there about ten minutes and had been masturbating themselves I saw Muller get up and put his penis through the hole in the partition, and even so did that the man in No. 1, sitting on the

CASE #1508

on the edge of the stool, reached over and took this man's penis in his right hand and put it in his mouth, and after a second or two had elapsed I saw Lieutenant Carney open the door and push this man away from the penis of the other man, and when he did that I came on downstairs.

Q Let me ask you this, in looking through that hole, could you see any of the floor space on the outside of the closets? A It is possible to see about--

Q "Yes" or "No" to that? A Yes, sir.

Q That is to say you could see some of the floor space that was outside of the closet in the toilet room? A Yes, sir, and you could see a man-- well, you could see enough of that space to-- you could see a man if the door was closed.

Q If the door was closed you could see a man if he were flush up against it on the outside? A Yes, sir.

Q Go ahead. A After Carney had opened the door and pushed this man away I came on downstairs, accompanied by Bangs. When I got downstairs Fuller had just been taken from No. 2, and Weikly was just in the act of coming out of No. 1, just as I came in the toilet room, and there was some conversation and the officer was sent for, and we took them to the station house.

BY MR. WOODRUFF:

Q Did you hear this defendant say anything after he was under arrest? A I did.

8091
CASE #1508

Q What?

MR. TALIAFERRO: One moment; I object.

THE COURT: I will allow it. You have the right to examine the witness preliminarily, if you contend it was said under duress, otherwise, I will receive it.

MR. TALIAFERRO: He was actually under arrest at that time.

THE COURT: I will allow it.

A He was in custody; the city officer had not arrived yet.

MR. TALIAFERRO: He was in custody of you four men?

THE WITNESS: Yes, sir.

MR. TALIAFERRO: I submit to your Honor--

THE COURT: I will receive the evidence. The mere fact of an arrest does not exclude it.

MR. TALIAFERRO: Exception.

THE COURT: You have a right to interrogate the witness for the purpose of showing there was intimidation or duress or inducement offered. In the absence of such questions, I will receive the evidence.

Q Proceed with your answer.

A I will have to say what was asked him, and what the answer was, so as to get it out.

THE COURT: Certainly.

A (Continuing) This defendant was asked why in the world he did such a thing.

CASE # 1508

THE COURT Who said that to him?

THE WITNESS: Captain Dunn, in my presence. He asked him why in the world he had done such a thing, and he stated he was a member of a good family, and I think ~~his~~ his exact words was that he was a black sheep, and to let him go. The other man, he also-- to be exact, when we came downstairs, the first thing that was said, was by the man who accompanied me.

Q When you say the man who accompanied you, who do you -- who have you reference to? A Bangs.

Q Bangs spoke? A Bangs spoke.

Q Who did Bangs speak to? A He spoke to Captain Dunn.

Q And after Bangs had said something to Captain Dunn, who spoke next? A Bangs also spoke again. He asked the other defendant a question, and it was answered, and then we demonstrated by his answer that what he said was not true.

THE COURT: Strike out "We demonstrated what he said by his answer, that what he said was not true, and the jury will disregard it."

A Muller asked us to please let him go, that he had a wife and family in Jersey, and that he had never done such a thing before, and all the way to the station house Muller kept asking us to let him go, to please let him go, that he had a wife and family, and that he had never done such a thing before.

THE COURT: I am inclined to think I will strike

CASE # 1508

out what Muller said, and the jury will disregard it.

MR. TALIAFERRO: I understand your Honor strikes out what Muller said?

THE COURT: I saw, I will strike out what Muller said and the jury are told to disregard it.

MR. McWILLIE: That is all.

CROSS EXAMINATION BY MR. TALIAFERRO:

Q Mr. Miller, how long had you been up on the floor when you first saw Muller come in? A I don't know the time, correct.

Q About? A I don't know about 40 or 50 minutes.

Q What? A 40 or 50 minutes.

Q 40 or 50 minutes; looking through those holes, or either one, or both of them, could you see in Toilet No. 2?

A Yes, sir.

Q Could you see in Toilet No. 2? A Yes, sir.

Q Could you see in Toilet No. 3? A No, sir, not through those two particular holes.

Q Did you look and see whether you could see into Toilet No. 2? A I didn't look for the purpose, but I know I could not see only in 1 and 2.

Q You did know there was a hole between No. 2 and No. 3 in the partition, didn't you? A I did.

Q You knew that? A I did.

Q Could you see that hole in the partition between No.

CASE #1508

2 and No. 3? A Yes, because I had seen Muller paste a piece of paper over that hole.

Q Could you see the hole? A Yes, sir from that side I could see the hole.

Q Through the holes in the ceiling, could you see the holes in the partition between Nos. Three and Four? A Yes, sir, but you could not see the other side of the partition.

Q But you could not see inside of No. 3? A No, sir.

Q Did you know there was a man in No. 3? A I know there was going on? A Not of my own personal knowledge, no, sir.

Q After you came downstairs did you see any man go out of No. 3? A There was a man passed, running past the side of the toilet, but where he came from I don't know.

Q You don't know whether he came from No. 3 or not? A I don't know.

Q It did not occur to you that when Muller pasted a piece of paper over the hole between No. 2 and No. 3 that there was some man in No. 3? A No, sir.

Q I told in the Grand People's Exhibit No. 1, where you had the picture that you looked through? A Yes, sir.

Q You have just one of them has a splinter in it? A Yes, sir.

Q The 4 you looked through from the window, wasn't it? A Yes, sir.

Q The one with the splinter in it was furthest from

CASE # 1508

from the top of the cement.

BY THE COURT:

Q Do you know the distance between the surface of the
bottom of the holes and the surface of the cement? How
far apart is it? Is it about 2 feet? Is it about 2 feet
or more? Is it about 2 feet or more?

BY MR. TARTAGLIA:

Q Then Mr. Butler, when you saw the holes, did you
ever see them? Did you ever see them? Did you ever see them?
When, the cement was there? Did you ever see them?
When?

BY THE COURT:

Q You had to get down to the level of the holes to see
to the level of the holes? Did you ever see them?
ing in that cement floor? Did you ever see them?
ence of about 2 feet away from the holes? Did you ever see them?
I did not see--

THE COURT: No; you may see nothing.

BY MR. TARTAGLIA:

Q Mr. Butler, were two of these holes there at that time
or only one? A There was two.

Q Do you know when they were placed there of your own
knowledge? A I helped make them. That is I helped make those
holes, but I can't recall whether it was the same day, but I
think it was the same day as this arrest. Yes, it

CASE # 1508

was the same day.

BY THE COURT:

Q Were the holes close enough together so that you could see through both at the same time? Do you understand the position? A Yes, sir.

Q Could you see the hole in the wall?

Q Did you at any time look through the hole in the wall?

BY THE COURT:

Q Did you borrow any money from the bank?

A Yes, sir.

Q Where did you see the money?

Q Did you borrow that money from the bank?

Q Did any one else borrow it at any time? A Not to my knowledge.

BY THE COURT:

Q And to what extent, do you know, did the depth, the thickness between the level of the ceiling and the level of the floor obstruct your vision through

A I don't know, your Honor.

Q Did you see the hole in the floor? A Yes, sir.

Q If you looked at all at an angle, the fact that there was that thickness, would obstruct your view, isn't that so? A I understand your question.

CASE # 1508

question.

If you looked down through the upper hole at anything of an angle in other words, not absolutely perpendicularly down, your view would be obstructed by the side of the surface between the ceiling level and the cement? A Well, not at a very slight angle, because these holes were bored - say the hole is ~~that~~ ^{like} (indicating), these holes were bored toward the centre of the hole, and once you got at an extreme angle, it would not interfere.

Q A person standing where I go, with respect to the opening in that ink well can only see down a portion of the way to the bottom, for the reason the view to the bottom of it is obstructed by the circumstance that there is a considerable distance between the hole and the bottom, and the view is shot off by the side, I understand that? A Yes, sir.

What I am getting at is that the holes were bored like this (illustrating): Here was the cement, and the hole was in the center; now, looking that way, this flooring was only about three quarters of an inch thick.

Q I understand that the hole in the ceiling was directly under the hole in the cement; is that so? A No, I should say, your Honor, that the cement, if I may show you from those holes -

Q Do you tell me that the hole in the cement was not directly over the hole in the wood? A I mean this: The hole in the cement was a square, cut out, by cutting that out left it like a box. Then these two holes here were just like

1508

CASE

that (illustrating).

Q So you say the thickness, in point of fact, you looked through was merely the thickness of the planking of the ceiling? A If I may show the hole in the cement, is a trifle larger than this block.

Q You will have to talk so the twelfth man will hear you. A The hole in the cement is somewhat larger than this, say be an inch, maybe an inch and a half, because in cutting it out, they had to leave space for that cement.

Q You say that the size of the hole in the cement was such that when you looked down through it, your vision was not obstructed by the sides of that hole? A Yes, sir.

Q And that the only thickness in point of fact, through which you looked was the thickness of the planking covering the toilet? A Yes, sir.

BY MR. MCCORMICK:

Q Did you help cut out that piece of ceiling? A No, sir, I did not.

MR. TALIAFERRO: I am not through yet. I have not commenced.

BY MR. TALIAFERRO:

Q Mr. Butler, did you see, through either one of those holes, the defendant in the act of sodomy? A I did.

Q Did you see his mouth at the time? A From the position they took I won't say that I could see his mouth, but I could

CASE #1508

see the crime in its commission.

Q How could you see the crime in its commission unless you saw his mouth? A well, he was down in this position.

(Illustrating) And I was looking down from above. I could see his face, and could see the other man's penis.

Q Could you see his nose? A Yes, sir.

Q Did he have his hat on? A No, sir.

Q Could you see his nose and his mouth through both of those holes? A No, sir.

Q Which? A No, sir.

Q Which one? A The one nearest the window.

Q You could not see it through the other? A No, sir. You could see the man in No. Two through the other hole, but you could not see the man in No. One. By looking in you could see in booth No. 1 but you could not see the actual commission.

Q The partition between No. 1 and No. 2 has a large coping or cornice on top? A No, sir, it is not over an inch and a half or two inches, if it is that.

Q That is the coping or cornice on the top of the partition between one and two? A Yes, sir.

Q Your judgment is it is about one and a half or two inches? A Not more than that.

Q Then you concede that you could not see the defendant's face at all through the hole farthest from the window?

CASE # 1508

A Yes, sir.

Q And you could only see it from the hole nearest the window? A Yes, sir.

Q Now, don't you know, as a matter of fact, that that hole nearest the window was put there the day after the arrest? A I do not, because I helped bore that hole on the day of the arrest.

Q You did? A Yes, sir.

Q Who bored the hole? A The carpenter bored the hole, and I assisted in making the hole through the cement.

Q That was on the very day this occurred? A Yes, sir, in the afternoon.

Q Have you ever been arrested for crime? A I have not.

Q Ever been convicted? A I have not.

MR. TALLAFERRO: That is all.

O W E N M . D A N G E , called as a witness, and being on behalf of the People, and being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ACCORDATION:

Q What is your name? A Owen M. Dange.

Q Where do you live? A 403 Broadway Street, Brooklyn.

Q What is your occupation? A Connected with the Police Department of the City of New York.

Q Were you ever arrested or convicted of any crime?

CASE #1508

A Yes, sir.

Q About seven o'clock-- between seven and eight in the evening of that day, where were you? A I was upstairs, in the abandoned toilet room, looking down through a couple of holes that were bored in the floor.

BY THE COURT:

Q At that time what were the relative conditions of light as between the light in the toilet, the degree of light in the toilet, and the degree of light in the room in which you were?

A There was no light in the room in which I was.

Q So that, the condition there was one of greater darkness than in the room downstairs? A Yes, sir.

BY MR. McCORMICK:

Q And how was the room below you lighted? A It was lit by a couple of jets from the different toilets, and about seven or eight lights throughout.

Q Were they gas or electricity, or what? A Gas light with a Welsbach lamp.

Q Could you see in the booth nearest the window, and the next booth? A Yes, sir.

Q Clearly? A Yes, sir.

Q Who was with you? A Mr. Rutter.

Q (By the Court) That is the last witness? A Yes, sir.

Q Did you see a man named Muller that night? A Muller? Yes, sir.

CASE # 1508

Q And did you see this defendant? A Yes, sir.

Q Which one did you see first? A Saw Muller first.

Q Which one did you see first? A Muller.

Q What did you see Muller do? A Muller entered No. 1 toilet first.

Q What is that? A Muller came into No. 1 first, stayed there a few minutes, and then he left.

Q What did he do while he was in there? A He sat down, and started to play with his privates and looked through-- then he got up and looked through the slats of the door.

Q We are talking about Booth One; is that right? A Yes, sir.

Q Then what did he do? A He got up and went out.

Q Then where did he go? A I don't know.

Q When is the next time you saw him, or the defendant?

A I then saw Muller enter No. 2 toilet again.

Q What did he do? A Stood in there, sat down, took his hat and coat off, and hung them up.

Q Tell us all that you saw him do? A Within about half a minute Muller entered No. 1 toilet.

Q Tell us what they both did? A And took off his hat and coat and sat down. Both started to play with themselves, and then they started to look through a small hole in the partition. First one would look through and then the other. Muller and him continued to sit for about ten minutes. Then Mul-

8061
CASE #1508

ler took a piece of toilet paper out of the cabinet, and spit on it, and put it over the hole leading into No. 3 toilet. Then he stood up and put his penis through this hole in the partition. The defendant Wallis then immediately reached over, took hold of it, and placed it in his mouth.

Q And you saw all this with your own eyes? A Yes, sir.

Q Then what happened? A Within ten seconds of that time, special officer Carley pulled open the door, reached in, and shoved this man's face away.

Q Did you see anything come out of this man's mouth at this time? A No; I could not see it come out, it was done so quick.

Q Then what happened? A Then Mr. Nutter and myself started downstairs and by the time we got there Captain Dunn was there with another, and these two men were outside the door of the toilet.

BY THE COURT:

Q Where was the stairs located that you went down? A Outside, in the waiting room.

Q About how far away from the holes that you looked through? A I should judge about between fifty and sixty feet.

Q And those stairs led down into what room? A Into the waiting room proper.

Q And the foot of those stairs are about how far away from the door of the toilet? A Between about fifty and sixty feet.

CASE # 1508

BY MR. McCORMICK:

Q So you traveled from 100 to 120 feet, about? A Yes, sir. About that.

Q Did you hear any conversation between the defendant Wallis and anybody else? A Not at that time.

Q Did you later? A Yes, sir.

Q Where? A Going to the station house.

Q What did Wallis say? A I didn't hear Wallis say anything at all. I was not with Wallis. I was with Muller.

Q You never heard Wallis say anything? A No, not then.

Q Well, in court? A In court, the next day, he made a remark to Nutter. He said, "It is a wonder you fellows would not forget to show up this morning," and Nutter said, "What a chance you have got for us not to show up".

Q That is all you know about this case? A Yes, sir.

CROSS EXAMINATION BY MR. TALIAFERRO:

Q Banks, I wish you would show to the jury and the Court how far your eyes were from the top-- from the cement ceiling when you saw this act? A Well, at times I was down on my knees.

Q Just get down on your knees and show?

THE COURT: Put yourself in the position you were in when your face was closest to the top of the cement hole.

THE WITNESS: I was sitting on a small box while this was going on, that's down, this way (illustrating), and I

CASE # 1508

asked Nutter, I said, "Nutter"--

THE COURT: Never mind that. Your face at that time was about how far above the level of the cement floor?

THE WITNESS: About two and one half or probably three feet.

Q Two and one half or three feet above the cement floor?

A Yes, sir.

Q And which one of those holes were you looking through?

A Well, I would alternate.

Q There was one nearer the window than the other, wasn't there? A Yes, sir.

Q And which one did you look through? A I looked through both alternately.

Q Did you see the man in No. 3? A No. 3, no, sir.

Q Could you see in No. 3? A Well, if a man went in, I could see his head.

Q (By the Court) By that you mean when he was standing up? A Yes, sir.

Q If there had been any man in No. 3 could you have told it? A Yes, sir.

Q You could have seen it? A Yes, sir.

Q There was not a man in No. 3, was there? A I was not paying any attention to No. 3 toilet at that time.

Q You was not? A No, sir.

Q You saw another place some place over a hole in the partition between No. 2 and No. 3, didn't you? A But he was

CASE #1508

in No. 2.

Q You saw him place paper over the hole ~~in that~~ ~~in~~ between No. 2 and No. 3? A Yes, sir.

Q And you did not look into No. Three at all? A Well, during the evening we did, yes, sir.

Q And when you looked in No. Three was there any one there? A Well, there was several people came in and out the various toilets.

Q Do you mean that several people came in to No. Three? A Well, in the various toilets at different times.

Q (By the Court) You are referring now to a time after the arrest? A No, sir; before.

Q Before the arrest, I mean? A Yes, sir, that is what I am speaking about.

Q Did any one go into No. 3 while you were upstairs watching? A Oh, yes, there was people in No. Three, they were in all the toilets at various times.

Q Was there more than one man who came in and went out of No. Three? A I could not specify any particular number.

Q But you do know there was one man who came into No. Three? A I am not going to be positive he was in there at that exact time; but there was people coming in all the toilets at various times.

Q I just asked you a moment ago, whether or not, while you were upstairs, any one came into No. 3 and you said yes, didn't you? A Yes, sir.

CASE #1508

Q Then there was one man came into No. 3 while you were upstairs watching? A H, yes.

Q Was there more than one man went into No. Three?

A After he left I suppose there were other people came in there.

Q Not what you supposed; but did you see more than one man go into No. Three? A I was not bothering for that at all, counselor.

Q Did you see more than one man go into No. Three? A Well I can't be positive of that.

Q Well, Mr. Bangs, what business were you engaged in before you were employed by the Pennsylvania Railroad? A Private detective.

Q Private detective? A Yes, sir.

Q Is that your business all along? A Yes, sir.

Q Where were you born? A In Baltimore.

Q Where? A Baltimore, Maryland.

Q You were born in Baltimore? A Yes, sir.

Q And how old are you? A 36.

Q 36? A Yes, sir.

Q Did you ever have any other name besides that of Bangs? A Not any other that I know of.

Q Did you ever pass by any other? A Well, in private detective work I suppose I have, at various times, so as not to be known, used another name.

Q You have had half a dozen assumed names? A Not an

Q

8091
#1508
CASE

assumed name, and no alias either.

Q You never had any other name except that of Bangs?

A That is his Christian name.

Q Were you in Baltimore in 1901? A In 1901? well, I have been there very frequently. My mother and father live there, in Baltimore County.

Q Were you at one time a printer by trade? A A which?

Q A printer? A No, sir; I had a brother who was a printer.

Q Is he a printer? A Yes, sir, he was not a printer, he was a compositor.

Q Were you ever indicted for crimes yourself? A No, sir, positively not.

Q And you were never in prison in the city of Baltimore? A Positively not.

Q There never was any charge of lewdness brought against you? A Positively not.

MR. LEONARD: Objected to.

THE COURT: Objection sustained.

Q Mr. Bangs, did you see any act of masturbation there at that time? A They were playing themselves.

Q Who were playing themselves? A The both of them.

Q Before this act took place? A Yes; playing with them only, to obtain a erection.

Q You said both of these men were masturbating before this act occurred? A Yes, sir.

8091
CASE #1508

Q How long before the act occurred? A well, they were in there about ten minutes.

Q Were they in there about ten minutes before the act of robbery commenced? A About that, yes.

Q About ten minutes? A Yes, sir.

Q Muller went into booth No. 3 first, did he? A Yes, sir.

Q How long had he been in there when the defendant came in? A About half a minute.

Q About half a minute? A Yes, sir, followed him almost in.

BY THE COURT:

Q Did you hear at any time any conversation between the defendant and Muller or Muller and anyone else? A Yes, the defendant was placed under arrest.

HARRY TUCKER SANDERSON, called as a witness on behalf of the People, duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMACK:

Q What is your full name? A Harry Tucker Sanderson.

Q Where do you live? A 234th Avenue, Rahway, New Jersey.

Q On the 24th of August, 1912, what was your occupation?

A Acting vehicle ticket collector, Pennsylvania Railroad, Courtlandt Street, New York, ferry station.

CASE # 1508

Q How long had you held that position? A August, during the month of August.

Q How long are you in the employ of the Pennsylvania Company? A Going on twenty three years.

Q Twenty three years? A Yes, sir.

Q About that time did you observe the condition of the lower right hand pane in the window from which you look into the toilet from the dock or bulkhead? A Yes, sir. Whether I observed it?

A Yes. A Yes.

Q What was its condition? A Well, I was engaged in a watchman.

THE COURT: No, what was the condition?

A Well, I got up on the platform and looked into that window, and saw this condition of the lower right hand pane with different holes.

THE COURT: You didn't understand the question. Strike it out. You were asked whether you had observed the condition of that pane, isn't that so?

A Yes, that is right; yes, sir.

THE WITNESS: The window was in. The panes were in.

THE COURT: In other words when you looked at the windows nearest to the No. 1, the panes of glass were all in that window?

CASE # 1508

THE WITNESS: Yes, sir.

THE COURT: And when was it that you last looked at that window before August 20th?

THE WITNESS: I looked from the 16th to the 20th through that window, and the night of the 20th, between 8 and 9 o'clock, I saw a person in the window.

THE COURT: Did you see him?

THE WITNESS: Yes, I saw him.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

THE COURT: Did you see him again?

THE WITNESS: Yes, I saw him again.

CASE # 1508

Q Did you look through it on the 22nd of August? A Yes, sir.

Q The pane was then broken? A Yes, sir.

Q Did you look through it on the 3rd of August? A Yes, sir.

Q Was the pane broken then? A Yes, sir.

Q And on the 21st of August, when the boat was captured, the pane was broken?

Q On the 21st of August did you look through the pane?

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Q Did you look through the pane on the 21st of August?

BY MR. MCCORMICK:

Q Did you notice the window after the 24th of August?

A Yes, sir.

Q Do you know when that broken window was replaced?

A I do not, sir.

Q Do you know about how long it remained-- A I know.

It was a month or so afterwards that the light of glass was

put in.

Q What were your duties in that ferry house? A My duties

CASE #1508

was acting as a collector; that is, taking from the wagons--

Q. Wax was Take this money, and point out where it was
your duty to stand or be. Look at it carefully, and as you
you approached it (holding witness to witness)? A. I ran
and the door leading out of the building from the
entrance.

Q. (By the Court) You saw the defendant
standing and as he came from the door, he was carrying
money? A. Yes, Sir.

Q. Did you have a chance to see the defendant
before, only while the door was open?

Q. Were you a few feet from the door? A. Yes, Sir.
Looking towards the door. A. Yes, Sir.
An there once or twice and saw the defendant
five or six times, only while the door was open.
Traded off money.

Q. Before the 14th of August, 1911, had you ever
seen the defendant? A. Two or three times--

Q. "Yes" or "no"? A. Two or three times in the

Q. When? A. Well, I could not exactly name-- because of
the time of day.

Q. (By the Court) Of August? A. Of August, yes, Sir.

Q. In these occasions, what did you see the defendant

THE COURT: I don't allow it.

Q. Well, Sir, the witness, I object to that, if

CASE # 1508

your Honor please.

THE COURT: I won't allow it.

MR. McCORMICK: I submit it is a proper question, as the answer to it will show the intent of the defendant.

THE COURT: I will not receive it.

Q Did you see him on the evening of the 24th of August?

A Yes, sir.

Q What did you see him do that evening? A I only saw him when our detectives had him.

Q You didn't see him before that? A No, sir. I had seen him before that.

Q I mean that evening? A Yes, sir.

Q Did you see Miller that evening? A Yes, sir.

Q Did you see Miller from the platform that day? A No, sir. I don't remember seeing him before.

Q Did you do anything to the platform outside of the window that looked into the toilet room on the 24th of August? A Yes, sir, I stood out in going up on this platform. It made a noise.

MR. TALLIAPETRO: Objected to.

Q Did you do anything to it? A Yes, sir; I brooded it up.

MR. McCORMICK: That is all.

CROSS EXAMINATION BY MR. TALLIAPETRO:

Q Mr. ~~Saunders~~ Saunders-- your name is Saunders? A No,

CASE # 1508

Mr. Sanderson.

Q Were you summoned as a witness here? A Yes, sir.

Q When? A On the 13th.

Q On the 13th of what month? A This month.

Q That was the first day you were summoned, was it?

A Yes, sir.

Q I understood you to say in your examination in chief that the last time you saw that the window was out of-- that the pane was out of that window was on the 21st of August?

THE COURT: 23rd.

Q At first I understood you to say it was the 20th of August? A No, sir; I broke it on the 20th.

Q Then the last time you noticed that the pane was out was on the 23rd of August? A No, sir. Yes, I ~~XXXXXXXXXX~~ had noticed it out on that day.

Q As to its condition at that time you have no knowledge? A Oh, yes. I know it was broken. I know the pane was still out.

Q For how long afterwards? A About a month. Of course, I didn't make any dates of it.

Q Now, do you swear positively to this jury that it was a month after the 23rd of August that that pane was out?

A Well, as far as my knowledge goes I am pretty sure it was out one month after.

Q Do you know it was out? A No, I ~~can~~ ^{can} swear it was out two weeks afterwards. I can swear to that.

CASE 1508

Q Will you swear that you knew it was out two weeks?

A Yes, afterwards.

Q You swore a while ago on entirely--

THE COURT: He said about a month.

THE WITNESS: About a month.

Q About a month? A About a month, yes, sir.

Q There is a vast difference between two weeks and a month? A Well,--

Q It was out two weeks or a month?

THE COURT: We won't pursue that any further. That is immaterial.

MR. TALIAFERRO: I will offer no evidence, your Honor.

THE COURT: No it is immaterial.

MR. TALIAFERRO: That is all.

EDWARD C. SWEITZER, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your full name? Edward C. Sweitzer.

Q Where do you live? A Jersey City.

Q Did you ever see those notes (handing witness People's Exhibit No. 3)? A Yes, sir. I did bore them.

Q You bored them? A Yes, sir.

Q Who asked you to bore them? A I was called up from the Police Department; they wanted to see me at 109 West

CASE #1508

Street and with one of the detectives I went over, and we bored them holes.

Q Do you remember the day? A Yes, sir.

Q What? A 24th of August.

Q What time of day? A In the afternoon.

Q What time about? A I ain't sure on that, what time?

It was about three o'clock before I started.

Q What is his business? A Carpenter.

Q What did you bore them with? A Frederick B. Richert.

Q What kind of implement did you bore them with? A With an auger.

Q And whose auger was it? A The detective got it somewhere.

Q Do you know the name of that detective? A I don't know the name.

Q Is he around here? A He is out there, the thing fellow.

Q Tell us all you did when you went there on the afternoon of the 24th of August? What is the first thing you did?

Q The first thing? What do you mean?

Q Wasn't that floor made of concrete? A It was a concrete floor, and I don't know what far I was sent over. We didn't have nothing to get the concrete loose, and the detective got a maul and I had a cold chisel and we got all them pieces got through to the floor, and then I bored them two holes.

CASE #1508

Q And did you look through those two holes? A Yes, sir.

Q And when you looked through them what could you see?

A On each side of the partition, I could see through them holes.

Q Could you see all on each side of the partition?

A Yes, sir.

Q You could see all of each booth? A All the way to the wall, on each side of that partition, I could see all.

Q Through one hole could you see all of one booth? A Yes, sir.

Q And through the other hole you could see all of the other booth? A Yes, sir.

Q And were these two booths the ones closest to the window, did you notice them? A Yes, sir, three feet from the window.

Q Is that the man you were with when you bored them (indicating witness Nutter)? A Yes, sir.

CROSS EXAMINATION BY MR. TALIACOTTO:

Q How do you know it is on the 24th of August? A I know it was the 24th of August. I have the time sheet with me.

Q What? A I have the time sheet with me.

Q Where is your time sheet? A (Witness produces paper)

BY MR. MCCORMICK:

Q Did you ever see that before standing witness people's

(Ex. 10, Re. 12) A Yes. That is the partition.

CASE #1508

Q Did you cut it out? A I cut it out last winter. I cut that out for a sample.

Q Last winter? A Yes, sir.

Q When about? A I can't tell when it was.

Q About how long ago? A About three months ago.

Q And that was between which booths? That was part of the partition between the two booths? A Yes, sir.

Q And when you looked through those holes-- A You could see that, yes, sir.

Q Who was with you when you cut that out? A Captain Dunn was with me.

BY MR. TALLANTIRE:

Q What did you get out of that partition?

A About three months ago. I cut it out.

Q Have you got some more of that when you cut it out? A No, sir. I can't find it.

Q (By the Court) You can't say you have not got it now with you? A No, sir.

Q Don't you have covered one of those holes at one time and another at another? A Two holes at one time.

Q May you not be mistaken about that? A No, sir.

Q When you were there, did you hear the di-

rection of Captain Dunn, or any of the detectives

you saw told you to do that? A Yes, sir.

Q The man that told you to do that? A Yes, sir.

Q You did it by his orders? A Yes, by his orders.

CASE 1508

I bored them holes.

Q Don't you know you bored one of them on Thursday, and the other on the following Monday? A No, sir; On the 24th of August I bored two holes.

Q You are employed by the Pennsylvania Railroad Company? A Yes, sir, I am.

Q How long have you been employed by that company? A Five years, going to be six years the 1st of August.

Q And ~~where~~ when were you summonsed as a witness in this case? A When?

Q Yes. A That was on the 13th.

Q 13th of what month? A This month.

Q You had never been summoned as a witness before that? A No, sir; never been.

Q Where is your place of business; over in New Jersey or New York? A In Jersey, working all over, at the stations.

Q Do you live in Jersey? A In Jersey is our shop.

Q You live in Jersey and your work is there? A Yes, sir.

Q Where were you subpoenaed? A Cortlandt Street Station, New York side.

Q Who served that subpoena upon you? Mr. Nutter? A The detective?

Q Yes. A I don't know his name; I ain't acquainted with them people.

Q You came over for the purpose of being served? A I was

CASE #1508

sent over by the foreman, to Captain Dunn's office.

Q And this detective served you with a subpoena in Dunn's office? A Right on the job.

Q And you were sent over for that purpose? A For that purpose, to do the job.

MR. TALIAFERRO: That is all.

BY THE SIXTH JUROR:

Q Who told you that you were to be a witness in this case? A Well, I don't know if I am a witness in this case, or not, only I had orders to show up here to-day.

Q Who told you? A The police department that ordered me--

Q Who told you? A Captain Dunn.

Q When? A Well, that was on the 13th of this month.

Q Where? A Up in 109 West Street.

Q Who told you to come over there? A Our office, our carpenter shop, they sent me over.

Q The same people who told you to go there and cut the holes? A Yes, sir, the foreman.

XX THE EIGHTH JUROR: I think the witness did not understand the question.

BY THE COURT:

Q In other words, the foreman of the carpenter shop attached to the Pennsylvania Railroad was the person who directed you to go the office occupied by Captain Dunn? A Yes,

CASE # 1508

Q And being there you were directed to come to court as a witness, is that so, or you were handed a subpoena? A Yes, sir.

Q You were handed a paper that commanded you to come here? A Yes, sir.

BY MR. McDERMICK:

Q Let us see that time sheet? A (Witness hands paper to Mr. McDermick).

Q Who wrote that? A That is a man in the shop, and the Foreman signed his name. He is an old man.

BY MR. TALIAFERRO:

Q Mr. Sweltzer, the reason you know this was on the 24th of August is this sheet says so; is that right? A That was the 24th of August.

Q How do you know it was on the 24th? A I know it was on the 24th.

Q You know that because this sheet says so? A (No answer).

BY THE COURT:

Q Suppose you did not have the sheet to look at, suppose the sheet had not been made out, would you still remember that it was August 24th that you cut the poles? A I might have missed a day or two, something like that; only Captain Dunn called me up, and I guessed, and he said it was such and such a date, and then I went in the office to find out what the date was.

CASE # 1508

Q Do you recollect that you cut both the holes on the same day? A On the same day.

Q Now, do you remember that? A Yes, sir, I do.

BY MR. BARNETT:

Q Do you know what day of the week it was? A What date?

Q What day of the week? Monday, Tuesday, Wednesday?

A I don't remember that.

BY THE COURT:

Q What hour of the day was it when you cut the holes?

A That could be about three o'clock, I started to work.

Q You started to work about three o'clock in the afternoon? A Yes, sir.

Q How long did it take you to cut the holes? A I was on it until quitting time. We quit five o'clock; so I just got back and caught my train.

Q When you quit at five o'clock were both holes cut?

A Yes, sir, both holes was cut.

Q Do you remember which hole you cut first, the one nearest to the window or the one furthest away? A To the window.

BY MR. BARNETT:

Q Do you remember the day that this defendant was arrested? A I don't know; the same day; a few was arrested, but I don't know he was arrested.

THE COURT: Strike that out. You did not see the

defendant arrested?

CASE # 1508

THE WITNESS: No, sir, I did not.

Q After you cut those holes, did you make a report to any one? A Well, the next morning I made the report. The foreman himself ~~he~~ didn't know what for--

Q What is that foreman's name? A Frederick W. Richert.

Q Do you know how to spell his last name? A R-i-c-h-e-r-t

Q You reported the fact that you cut those holes to him?

A Yes, sir.

Q Is he your foreman? A Yes, sir-- next morning.

Q Where is he employed now? Whereabouts does he work now? A He is a foreman carpenter now.

Q Where? A Up in Jersey City.

Q Whereabouts in Jersey City? A Corner of Greene and Bay Streets is the shop.

Q How do you spell Bay? B-a-y? A Yes.

Q Is he in the employ of the Pennsylvania Railroad?

A He is.

Q He is one of their foremen? A Yes, sir.

MR. McCOLLICK: That is all.

THE COURT: We will take a recess now. Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you. The Court takes a recess until 2 P.M. (The Court accordingly took a recess until two P. M.)

8051
CASE 1508

AFTER RECESS.

FREDERICK W. RICHERT, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q What is your name? A Frederick W. Richert.

Q Where do you live? A Jersey City.

Q On the 24th of August, 1911, in what business were you engaged? A I was a foreman carpenter, Pennsylvania Railroad.

Q How long had you been employed by the Pennsylvania? A Fifteen years.

Q I will ask you whether that is your signature on that paper (handing paper to witness)? A Yes, sir, that is my signature.

Q When did you write your name on that paper?

A It was on the 25th of August.

Q What time of day? A It was in the morning.

Q And that is a report of the work of the 24th of August? A Yes, sir.

Q Who gave you the information to put down on that?

A That master carpenter, Pennsylvania Railroad.

MR. TALIAFERRO: I move to strike out the answer that that is a report of the work done on that day. The paper shows for itself.

CASE #1508

MR. McCORMICK: Well, I will offer it in evidence.

MR. TALIAFERRO: I object to it.

MR. McCORMICK: Upon what ground?

MR. TALIAFERRO: Memorandums are not evidence, as I understand it.

THE COURT: I will allow the evidence to stand to the effect that on the 25th of August this witness wrote his name upon the paper which has been handed to him, and that he wrote it in the forenoon of that day.

MR. TALIAFERRO: Your Honor will allow me an exception?

THE COURT: The balance is out.

BY THE COURT:

Q Your hold a paper in your hand, and I understand that it bears your signature, and you say you wrote your name on the paper on the morning of the 25th day of August 1911; is that so? A Yes, sir.

Q And you wrote your name on that paper after a certain person had said something to you. Somebody said something to you, and after that person said something to you, you put your name on that paper? A I keep the time for every day when a man is sent out, and send it to the master carpenter.

CASE # 1508

BY MR. McCORMICK:

Q That is not an answer to the question. You wrote your name on the bottom of that paper on the 25th of August, in the corner? A Yes, sir.

MR. McCORMICK: That is all.

THE COURT: You had better mark the paper for identification.

(Paper last referred to is marked People's Exhibit No. 6 for identification, of this date.)

CROSS-EXAMINATION BY MR. TALIFERRO:

Q When did you get a message to come to the court today? A I had an order from the master carpenter.

Q What? A The master carpenter sent a telephone today.

Q I can't hear a word you say.

Q (By the Court) What time was it that you received instructions to come where you now are? A One o'clock.

Q And where were you? A I was in the Hudson Terminal Building, in the office of the Pennsylvania Railroad, New York.

Q A telephone message? A yes, sir.

Q Who sent that telephone message? A The master carpenter of the Pennsylvania Railroad, at Jersey City.

Q Didn't you come without subpoena? A Yes.

CASE # 1508

Q Were you subpoenaed? A No, sir.

Q You came without subpoena, and you are in the employ of the Pennsylvania Railroad? A Yes, sir.

MR. TALIAFERRO: That is all.

RE-DIRECT EXAMINATION BY MR. McCORMICK:

Q You talked to me the other day, upstairs? A Yes, sir.

Q And I told you to come when I telephoned for you? A Yes, sir.

MR. TALIAFERRO: Objected to.

THE COURT: Objection sustained; he came without subpoena. You have got that.

CHARLES DEVLIN, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your name? A Charles Devlin.

Q Where do you live? A Jersey City.

Q What is your business? A Glass, glazing, Pennsylvania Railroad.

Q Who employs you? A Pennsylvania Railroad.

Q Did you do any work at the ferry house on the 8th of November, 1911? A Yes, sir.

Q What did you do? A Put in a light of glass on

CASE # 1508

the southwest end of the toilet.

Q There are four panes of glass in that window, are there not? A Yes, sir.

Q The glass was broken? A The glass to the right.

Q To your right? A South side.

Q Above or below? A Below.

Q And you put that in the 8th of November? A Yes, sir.

Q You don't know how long it was out, do you?

A Don't know how long it was out.

MR. McCORMICK: That is all.

MR. TALIAFERRO: That is all.

THE PEOPLE REST.

MR. TALIAFERRO: If your Honor please, I move to dismiss the indictment, and I move your Honor to instruct or advise the jury to return a verdict of not guilty, upon the ground that the verdict is not sustained by the evidence, and upon the specific ground that the only evidence of the guilt of the defendant is the testimony of detectives, and that testimony is wholly uncorroborated.

THE COURT: Motion denied.

MR. TALIAFERRO: Exception.

CASE #1508

THE DEFENDANT'S CASE;

Mr. Taliaferro opened the case to the jury on behalf of the defendant, as follows:

Gentlemen of the jury, you, as jurors, and we, my friend and myself, as lawyers, encounter a great many things in our lives that are exceedingly unpleasant and disagreeable. This, in a practice of law of forty years, is the first time I have ever been called upon to try a case of this nature, and I trust it will be the last. Referring to unpleasant duties, I suppose this is added to you. I know it is a very disagreeable thing of good morals and good citizenship to hear detailed the disgusting accounts of a case like this. For all that, there is no avoiding them we get out of it, and that is the best way to perform our several duties, and in the discharge of those duties we assume, all of us, not only a grave responsibility, but the graver or the gravest of all is that of a jury in determining the guilt or innocence of the defendant.

It is my privilege, under the rules of this court, and my duty to my client, to indicate to you before we commence our evidence, what will be the nature of the defence in this case, in order that you may follow the line of the defence, and, beforehand,

CASE # 1508

have some idea of what we expect to prove.

We will show you, gentlemen of the jury, by the evidence of this defendant, that this young man is twenty-six years old. That he is the son of James Weikly, and his wife, who owned their own home and have their residence in Jersey City. That he himself is, or was, at the time of this arrest, a fireman on the Pennsylvania Railroad - a brakeman, I mean to say, on the Pennsylvania Railroad. That his record as a brakeman of that company was of the very best. We will show that his surroundings at his home were calculated to engender moral ideas, instead of bad ideas as are incorporated in this indictment.

We will show that, on the night before this transaction, commencing at eleven o'clock the night before this transaction, he was on duty as a brakeman, going to Philadelphia, and after waiting there an hour or two, returned to New York, on his train, in the discharge of his duties, and landed back in New York City at eight o'clock in the morning; that he was up nearly the whole of that night, the night before this occurrence took place.

A I said before, we will show that the family of his father and mother, both of whom will take their place on the witness stand, were of the very

CASE # 1508

best; that, instead of being a black sheep of the family, as has been indicated here, that he was looked upon as a model young man, and that his surroundings, and his environments were such as to have made him a model young man.

We will show that he didn't know the other defendant, also indicted, George M. Muller, until about two years before this transaction. That he never had a conversation, except casually, with him in his life. That he had not seen him for several weeks before this arrest took place. That he did not know, and had no means in the world of knowing, that George M. Muller would be in the Pennsylvania ferry house on the night of the arrest. That there could not have been any previous arrangement to consummate a transaction like this. That he met him there by the merest accident in the world; that he had no idea that he was in or near his home in Jersey City until he saw Muller and recognised him by his back as he went into this toilet for the purpose of discharging his bowels.

We will show that after he got in there that he discovered there was some one else in the adjoining toilet. In fact, he had seen Muller go into the adjoining toilet, and after the defendant had discharged his bowels he undertook to turn the little

RECORDED
INDEXED
CASE # 1508

screw in the paper box, and it would not work; it was impossible to work it so as to get the paper out. He turned it and turned it time and time again. He then spoke to George Muller and asked him if he had any tissue paper that he could use in his toilet room. George Muller answered he did; turned the screw in the toilet paper box in his room and unfolded some half a dozen or ten sheets, rolled it up and passed it through the hole, and the defendant used the toilet paper, ~~the~~ ~~he~~ buttoned up his pants, put his coat and hat on, and walked out, or was about to walk out when the arrest took place.

We will show that he had his hat on at the time; that he had taken his coat off and hung it up on this nail, and that the bottom of the coat struck about even with where this paper box was, and an ordinary dark colored coat, or light colored coat, perhaps, a sack coat, like the one I have on; and we will show that the bottom of that coat hung in such a position that it concealed his face from view, especially from the window where Dunn said he was watching.

A great deal of evidence will be adduced before you by James Weikly, the father of the defendant, whose testimony, notwithstanding the old man's life is involved almost in the result of this trial, but whose appearance and whose manner will soon convince

CASE # 1508

you that he is entitled to be believed.

We will show that Dunn himself told James Weikly, the father of this defendant, that he could not see the transaction because of the fact that the coat hanging down, struck the paper box, and covered up the hole to such an extent that even if a person was watching it was impossible to see the act that is mentioned in this indictment.

We will show that when Carney rushed into this booth, that he grabbed hold of this defendant, and made an effort or an attempt to strike him; that the defendant was perfectly amazed; he was shocked, and asked Carney, "What on earth do you mean? Are you crazy? Are you hunting for some other man? What are you trying to do?" Carney, instead of telling him what he was charged with, merely waved his hand, and said, "Oh, you know, you know, you know", grabbed hold of him, took him out into the main toilet room, and then called over Dunn, and took him to one side, away from where Nutter and the Bangs were in charge of the other defendant, and then, when these detectives had gotten him to one side, away from the other two, they lunged their heads down close to him and said, "Have you got any money? How are you fixed?"

The defendant said, "Have I any money for what? What do I want to pay you money for? What are you

CASE # 1508

talking about? What am I here for? What is the charge against me?"

"Now, you know what the charge is; you haven't got any money?" "No, I have not." "Well, then, has your father any? How is your father fixed?"

"My father has no money? Why should I pay money?" "I don't contend that any threats were made, or any money was ultimately extracted from Muller."

After staying on the outside for some little time, as has been admitted by Carney, I think, unthoughtedly, there was another man right in booth No. 3. There was a hole between; there was no paper pasted on that partition by George Muller nor anybody else. All the man in the adjoining toilet had to do to witness this transaction was to put his eye, which was on a level with the hole, and there he could have seen George Muller penetrate with his person the hole between No. 1 and No. 2, and George Muller, the defendant, knew it. He knew there was a ^{man} who had joined the party that was almost bound to have, or could, at least, have seen the whole of this transaction.

We will show that after the arrest, and after Muller had been called upon for an explanation, after he had shown his indignation, and, as it was, he could not understand what they were driving at, they were

CASE # 1508

then carried on to the police station.

We will show that neither one of these defendants ever knew or had any idea of the crime he was charged with until he got to the police station, and when the officers called in with Dunn, the first time that Muller or the defendant, Weikly, had any idea in the world what he was charged with was when Dunn said - the sergeant at the desk asked him what the defendants were charged with, and he said, in a low tone of voice, sodomy. Up to that time George Muller nor George Weikly had any idea in the world what they were being charged with.

As to the probability or the meaning of this, we will argue after the evidence is all closed.

We will show you, gentlemen, beyond any shadow of doubt, by practical demonstration, that a man standing at the window where Dunn said he was standing, could not have seen what he claims to have seen.

We will show you, by an actual experiment, that the head and the hat and the person of a person sitting on that stool would have been directly between the ~~raw~~ hole and the window, and it was a mere matter of conjecture on the part of Dunn as to whether or not this act was taking place. We will show that beyond any doubt.

We will show you furthermore, that on the fol-

CASE 1508

lowing night James Weikly, the father of the defendant came over to New York, after hearing of the imprisonment of his son, or the arrest of his son, and the first thing he did was to go right to the place and find out what the trouble was, and to see the person who had brought these grave charges against his son. That he went there and had a talk with Dunn. He went over to his office, I think, at No. 9, or 209, or 109 West Street, just across West Street from the Pennsylvania ferry house, and he went there for the purpose of finding out the facts so that, if his son was guilty, he could make the most of it and enter such a plea. If he was not guilty that he could prepare to see that his son was vindicated.

At all events he went there for the honest purpose of investigating. He went in and had a talk with Dunn, and he asked Dunn to go down with him and show him where this thing occurred. Dunn went down and showed him where it occurred, and told him that he was at the window and that Carney was upstairs looking through the floor, or the hole, the hole. That was Dunn's statement to James Weikly on the following night. He didn't tell him that Nutter was up looking through the hole, and he didn't tell him that Bangs was looking down through the hole; but he told him that Carney was up there and that he was

CASE # 1508

looking through the window, and when he told him that Carney was up there looking through the hole he pointed his finger to it, and James Weikly looked up, and there was only one hole in that ceiling at that time, and that was the hole with the splinters in it.

So solicitous was the father of the son's welfare and the predicament he was in that he scrutinized it carefully in order to see the probability or possibility of such a thing occurring, and noticed that there was a splinter in that plank. Here is the splinter (exhibiting an exhibit to jury). His attention was attracted to it at the time. The other hole was not there. As to how it came there we will see hereafter.

He furthermore pointed to the window and told him where he was at the window. At that time the whole of the lower right hand window was intact, and it was covered with scum and stained to such an extent that it was utterly impossible for any one to get up on the other side and see persons sitting on the seat at all. They could have gotten up on the outside and looked through that window and have seen the vague form of a person standing in room No. 1.

Knowing the fact, as Weikly knew, James Weikly,

CASE # 1508

and seeing at once, and there for the purpose of seeing, that it was impossible to see through that window, and know that he was the father of this defendant and, therefore, his evidence would be looked upon as that of an interested person, he went over to Jersey City and got two of his neighbors, reliable, trustworthy neighbors, and they came back and went up and climbed on the outside of the ferry house to see if they could look through that window, and the window was intact, and the scum was over it, and these two men will come here and testify to it.

Now, we will show, furthermore, gentlemen, that this hole that was in the ceiling was not over the partition between No. 1 and No. 2. It was a distance of about five or six inches further from the window than the partition was, and I will show you, by actual measurements, that if the eye of a detective or anybody else had been placed right down at the hole, this way, that they could not have seen within six inches of the hole in the partition in toilet No. 1, within six inches, even if the eye had been - in other words, I will show you by a map which is measured exactly the same size of the room, I will show you that if he had gotten down, which he could not do, if he had gotten down and put his eye that way, that from the nearest point to the window he could

CASE # 1508

not have seen, looking over the top of the partition, which has a broad plank across the top of it, some several inches, that he could not have seen within six inches of the hole.

Secondly, it was utterly impossible for either Nutter or Bangs to have seen the mouth of the defendant in contact with the person of Muller.

I will show you furthermore, that a traveling salesman by the name of Kapes, who was an acquaintance of the Weiklys, and a friend, went there with Mr. Weikly, the father of the defendant, on Saturday night, two nights after this, and at the time he went there he went at the invitation of James Weikly, for the express ~~for~~ purpose of examining these premises, and that at that time there was only one hole in the ceiling.

I will show you that the mother of this defendant, having, of course, great solicitude for her son, came to New York, and on her way back home, her husband, and father of this defendant, desired to make another investigation so that he might be sure he was right, and as they had to ~~cross~~ cross the ferry coming home to Jersey City, when they got to the ferry house, he told the wife it was no place for her; it was a man's toilet, and to stay on the outside; and he left her and went into the toilet

CASE # 1508

room. Her solicitude and her anxiety was too great for that, and she disobeyed her instructions and went in there to see for herself, notwithstanding it was a men's toilet, and after she got in there her husband called her attention to the hole, and there was but one hole there, and the window pane was in the frame, the lower right hand pane, intact, at that time.

Now, on the following Monday or Tuesday, I don't remember which, there was a part of the pane broken out, in the left hand lower glass, on the following Monday. On that day there was a pane of glass broken out, cut out, with a sharp instrument, and made perfectly regular, but that was a part of the glass that did not overlook immediately toilet No. 1.

So, gentlemen of the jury, if we show these state of facts, and show by proof of physical facts that cannot be denied, that Dunn could not have seen the physical act charged in this complaint, and that neither Nutter or Bangs could have seen the physical act alleged in this complaint, if we show those facts - nor Carney, Carney don't claim to have seen it. If we show those facts, then we don't have to put it up to the jury whether they will convict a man of any crime, I don't care what.

CASE #1508

GEORGE H. MULLER , called as a witness
on behalf of the defendant, being duly sworn, testi-
fied as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

THE COURT: Colonel Taliaferro, are you also
the attorney for this defendant?

MR. TALIAFERRO: Yes, sir, for both defendants.
Your Honor understands the attorney of record is
Mr. McDermott.

THE COURT: I was only considering the propriety
of the necessity of warning this witness that he
is required to answer any question which would
tend to incriminate or degrade him. Do you under-
stand that?

MR. TALIAFERRO: Yes, sir.

MR. TALIAFERRO: I am his counsel, and I have
advised him fully as to his rights and privileges so
far as being examined today.

THE COURT: Proceed.

Q What is your full name? A George H. Muller.

Q Where do you live? A 150 Bidwell Avenue, Jer-
sey City.

Q How old are you, Mr. Muller? A Thirty-five.

Q And what is your business? A Lithographing.

Q Where have you been employed? A At the Atlantic
Litho Company.

CASE # 1508

MR. McCORMICK: I didn't hear that.

THE COURT: Say it again, and talk so all the jury can hear you.

Q Lithographing for what firm? A For the Atlantic Lithographing Company.

Q Located where? A Mott Street near Grand.

Q How long had you been employed by that firm at the time of this arrest? A About a year and a half.

Q By whom were you employed before that time?

A By a man named Otto Kowitz. He was in the lithographing business.

Q How long have you been a lithographer? A Ever since I started to work, when I was about sixteen years old.

Q And have you followed that business and none other since that time? A Only that.

Q Employed all that time in the City of New York, or elsewhere? A Only in New York City.

Q Where were you born? A Jersey City.

Q Where did you say your residence was in Jersey City? A 150 Bidwell Avenue.

Q Do you live in a house, or apartment, or flat, or what? A Two family house.

Q Do you occupy the house there? A Yes, sir.

Q Are you married? A Yes, sir.

Q How many children? A Yes, sir.

SECRET
CASE # 1508

Q How many children have you? A Two.

Q How old are they? A I have a boy ten and a girl seven.

Q Is your wife young and healthy? A Yes, sir.

Q Have your co-habitations with her been regular up to the time of this arrest? A Yes, sir.

Q How long have you been married? A It will be twelve years in October.

Q On the night of the 24th, or the afternoon or the evening of the 24th, of August, 1911, where did you take dinner or supper that night? A At home.

Q What did you do after supper? A Started to visit a friend in New York.

Q What is the name of that friend? A Mr. Herring, William Herring.

Q Where did he live? A Up town, 151st Street.

Q How did you go or start, by what route? A On the Ocean Avenue trolley line, passing the main street in Jersey City. Near my home. I left the house about ten after seven, telling my wife I was going up to see Mr. Herring, and as I left the house my two children were opposite, and I called them over and bid them good by, and kissed them, the same as any father would do, and I know it was ten after seven that I left the house, positively.

Q Did you go over the Pennsylvania ferry? A Yes, sir.

CASE # 1508

Q Were you alone, or with some one? A Alone.

Q And do you know what time it was you crossed over the Hudson River on the ferry? A Well, it usually takes thirty minutes to get to the ferry from my home, from the corner where I get on the car. You can make it in twenty-five minutes sometimes, but it usually takes thirty minutes. And that would be down to the ferry house about twenty minutes, I think, something around that, anyway.

Q And do you know what time you landed on the New York side? A Well, it was in the neighborhood of ten minutes to eight, I guess. It takes eight or ten minutes to cross.

Q Did you see any one on the ferry boat that you were personally acquainted with? A No, sir, nobody.

Q Now, I ask you if you knew that at time the defendant, George Weirly? A Yes, I knew him, but not very intimately.

Q How long have you known him? A About a year and a half or two years.

Q Where did you first become acquainted with him?

A At a theatre.

Q Who was with you? A My boy.

Q One of your children? A One of my children, yes, sir.

Q What theatre was it? A The Monticello theatre, in Jersey City.

CASE # 1508

Q How long before the 24th of August was it you had seen George Weickly? A How long before?

Q Yes? A You mean before August 24th?

Q Yes? A One month, about.

Q Had you seen him on that day? A The day of the 24th?

Q Yes? A No, sir.

Q Hadn't seen him before that time-for about one month, you say? A That is right.

Q And where was he at the last time you saw him before the arrest? A I was standing in line at a moving picture show with my boy, again; he was very fond of the moving pictures, and I used to take him quite often; and I was standing in line, ready to purchase some tickets, when Weickly came along, and said, "Hello, George".

I said, "Hello". He said, "Is that your boy?" I said, "Yes." In fact, he said, "He is getting big, ain't he?" Because he had seen him before.

Q That was about a month before the 24th of August?

A That was about a month before; in July, I guess it was

Q From the time that you first met George Weickly, a year and a half before the arrest, how many times did you see him in all before the arrest?

Q Yes? A Three times.

Q Did you ever have a private conversation with him

CASE # 1508

during that time? A Well, it didn't amount to anything.

BY THE COURT:

Q "Yes" or "no"? A No.

Q Did you ever have a conversation with him during that time in which you and him were alone? A Yes, for about two or three minutes.

Q Where? A I was getting on the car at Jersey City one night after a meeting, about half past ten or a quarter to eleven, and I was just going to get on a car when Weickler got off. He said, "Hello, Muller", and I said, "Hello", and that is all there was to it.

Q How long was that before the night of the arrest?

A That was about a year before.

Q Then you had only seen him three times in the year and a half? A That is all, yes, sir.

Q When you got to the ferry house what did you do?

A When I got off, as the boat was nearing New York, I felt I was getting cramps and diarrhoea very bad, and I was afraid I wouldn't get into New York in time. I went in the ferry house and I took and looked for a toilet, and found it in the rear of the building.

Q Had you ever been in that toilet before? A No, sir, never.

Q Never in your life before? A Maybe years before but never in the back part, only in the urinals. That was

CASE #1508

before the tube opened.

Q Had you ever been in the toilet where you sit down before that night? A No, sir.

Q Never before? A Never before.

Q Go ahead? A So I went in the back, and went in the first booth.

Q That is, booth No. 1, near the window? A The first booth as you come in, and I sat down, and when I got through I looked for some toilet paper; there was none in the box, so I took some dirty paper on the floor and used it.

Q What sort of paper? A A newspaper, or something.

Q What was the condition of the floor? A It was very dirty; it was a dirty place, anyway; so I went out and went over to the stand, about five feet away from the toilets, to wash my hands.

Q Were your hands soiled, from what? A Well, from the dirty paper, I suppose. I wanted to wash them. Usually do, anyway. And just as I was washing my hands and trying them on my handkerchief, I felt more cramps and I had to sit down again. So I didn't want to go back in No. 1 because there was no toilet paper there, so I tried No. 3 and it was occupied. Then I went into No. 2 and just as I was unbuttoning my trousers I heard some one cry, "Hello, Muller." I said, "Hello, who are you?" He said, "I am George Weikly, from up on the Hill."

CASE #1508

Q Just as you were unbuttoning your trousers?

A Yes, I was just about ready to sit down when I heard him talk to me.

Q That was in No. 2? A Yes, sir.

Q The place where you went to bathe your hands, how far is that from the door of No. 2? A What is that, Colonel, I didn't catch it?

Q (By the Court): How far was the point where you were washing your hands from the door of toilet No. 2?

A Well, about five foot; I think something around five foot.

Q Up to the time that you got into No. 2, had you seen George Weikly, the defendant? A No, sir.

Q When did you first see George Weikly, the defendant on that night? A When these officers ordered us out of the place, after we came out, after these officers ordered us out of the place, out of the toilet.

Q You had heard his voice before that? A Oh, yes, I knew who it was; he told me who it was.

Q You were in No. 2 and he was in No. 1? A Yes, sir.

Q There was a man in No. 3? A Yes, there was in No. 3, because I tried the door and couldn't get in.

Q And was there a hole between No. 3 and No. 2?

A I didn't see any.

Q Any partition? A 3 and 2?

CASE # 1508

Q Yes? A No, sir, I didn't see any.

Q Between 3 and 2? A No, sir, I didn't see any.

Q You don't know whether there was or not? A No, sir.

Q What did Weikly say to you? A Weikly says, "Where are you going?" - No, I says, to him, "Where are you bound for?" He said, "33rd Street station. Where are you going?" I said, "I am going up to see a friend of mine"; and then he tried the toilet box, and I heard him rattling around. He said, "Have you got any more paper? There is none in here"; and I was just pulling some to use for myself, and I said, "yes, there is plenty of it here", and I made a roll of it.

Q How large a roll? A You know what toilet paper is like; and I made a roll of it, and I seen the opening in the partition and I thought it would be a good way to pass it, so I handed it to him and he took it.

Q Did you hand it to him through the hole in the partition? A Yes, sir.

Q And did he take it with his hand? A Yes, sir.

Q What took place then? A I took some more paper to use for myself, and as I was stooping over I noticed Carney standing three feet away from the door.

Q How could you see him? A Through the slats.

Q What part of his person could you see? A All,

CASE 1508

or almost all of it; about from here, all down, anyway, (indicating).

THE COURT: In other words, a person inside the toilet and looking out, can see through the slats?

THE WITNESS: Yes, sir, because -

THE COURT: I don't want any because.

Q You could see him from about the waist down?

A Yes, if you sit there and look out; and I thought the man wanted to sit down badly; he was fumbling with his belt; and I hurried to get out for that reason.

Q Was he standing, when you first saw him or walking? A He was standing.

Q How far was he from the bowl where you had washed your hands? A About two feet from there, and about three feet from the closet door.

Q You say you leaned forward and looked under the slats? A Yes, sir.

Q And you could see from about his waist down?

A Yes, sir, you could not help seeing anybody when you are stooping that way, looking out.

BY THE COURT:

Q Do those slats slant from the inside in toward the toilet, or do they slant downward from the toilet side? A They must slant that way, because you would not be able to see if they were slanting up.

Q In other words, when you are inside the toilet,

CASE # 1508

the slats slant down towards the door; that is, on the outside? A Yes, sir.

BY MR. TALIAFERRO:

Q At the time you first saw him , from his waist down, what was your position then? What was your attitude? A When I first seen him, I was just using the paper, stooping over, like this (illustrating); and just as I was doing that he opened the door like that. I thought the man was crazy.

BY THE COURT:

Q Have you since learned the name of that man? Have you? A Yes, sir.

Q What was the name of that man? A Carney.

BY MR. TALIAFERRO:

Q Then what took place? A What?

Q Then what took place? A Well, then he left my door go, and he opened up Weikly's the same way, and then he opened up my own again, and he ordered me out. He said, "Stay, I want you." I said, "What do you want me for?" He said, "Never mind, just come out of here, I want you".

Q What did you say? A I said, "You either must be crazy, or you are making a damned big mistake. What is the matter with you?" So he said, "Never mind, never mind, never mind." Then Captain Dunn came running in and

CASE # 1508

says, "Have you got him right?" And Carney went this way (witness motioning with hands).

Q Did he say anything? A No, sir, he went like that (witness motioning with hands), and then, in a minute or so, another man came in; I don't know whether it was Nutter or Bangs, but I think Nutter was the third man in; and Bangs didn't say anything, and Nutter said the same thing, and "have you got them right? Is it two more?" he says. And I says, "Got who right?" "Never mind", he says, "never mind", and so on, and then one of them says, "Do you see that hole up there?" And they pointed to a hole in the ceiling, and they said, "That is where we seen you from?" I said, "Seen what?" "Never mind, never mind, never mind, you know what we want you for." Carney called Weikly over on one side, and Nutter and Bangs had me about three or four foot away, and I heard them say to Weikly, "Come over here, we want to talk to you", so the other two that had a hold of me, Bangs, said, "Are you any relation to Arthur Muller, in Jersey City?" I said, "No, sir"; and I have since found out that this Arthur Muller was -

THE COURT: Never mind that.

THE WITNESS: (Continuing) I said, "No, sir", I didn't want to tell him who I was related to. He says, "where do you live?" I said, "Jersey City." He said, "What is your name?" I told him. I said,

CASE #1508

"you are making a big mistake".

Q Did he tell you what you were charged with?

A No, sir. I said, "You are making a big mistake. What are you looking for? What are you trying to frame up?" And he said, "Never mind", and with that he brought in an officer, and they said, "Make the arrest", so they took us up to the station house; it was about three minutes walk from the ferry.

Q Where was the station house? A I think Greenwich Street; Greenwich, I think, Second Precinct, I think it is, about three minutes' walk.

Q About four or five blocks? A Yes, sir.

Q Up to the time you went up to the station house did you know what you were charged with? A No, sir.

Q Did either one of these men state to you in the ferry house what the charge against you was? A No, sir, I heard the -

Q Did they state it to you on the way to the police station? A I didn't open my mouth on the way to the police station to either one.

Q And when did you first know that you were charged with sodomy? A When I heard the lieutenant behind the desk say the charge is sodomy.

Q Do you know who it was who made the charge? A Yes, sir.

Q Who? A Carney.

CASE #1508

Q Was it Carney or was it Dunn? A No, sir, it was Carney, the stout man.

Q And up to that time you did not know the charge brought against you? A No, sir.

Q Now, you are the defendant in this action, you are a defendant in a similar indictment to this? A Yes, sir.

Q You are under charges the same as the defendant, George Weikly? A Yes, sir.

Q Mr. Muller, did you have your penis in the mouth of the defendant, Weikly, that night? A No, sir.

Q Did you have it in your fingers? A No, sir.

MR. McCORMICK: That is not the charge."

THE COURT: I think it is, the other way.

Q Did you put your penis through that hole in the partition between No. 1 and 2, on that night? A No, sir.

Q Did the defendant have your penis in his mouth that night? A No, sir.

Q Did you insert your person through the hole in any way whatever at all? A No, sir.

Q Was anything said in regard to doing such a thing on that night by either yourself or the defendant? A No, sir.

Q Did you, or not? A No, sir.

Q Mr. Muller, you say you are married and have a wife and two children? A Yes, sir.

Q What is your custom in regard to being home at night, or what was it at that time? A I was very seldom away

CASE 1508

from home at night.

178

Q And when you were away from home who went with you?

A Either one of the children. Sometimes the two. Sometimes we all went.

Q And you say your wife is in perfect health? A Yes, sir.

Q And a young woman? A Yes, sir.

Q And has been in perfect health ever since? A Always.

Q Before this time? A Always, I never had a doctor, outside of the confinement cases, for her.

Q (By the Court) How old a man are you? A Thirty-five.

Q Mr. Muller, you say he pointed to a hole in the ceiling? A Yes, sir.

Q Who pointed to that hole? A Bangs.

Q Was there more than one hole there? A No, sir, one hole.

Q Only one hole? A Yes, sir.

Q Was that the hole with the splinter torn off it?

A Yes, sir.

Q The one I point my finger to in this point (illustrating with People's Exhibit No. 3)? A Yes, sir.

Q The other hole was not there at that time? A No, sir, I didn't see it there.

Q Do you know whether there was a window out over the toilet No. 1? A I couldn't say.

CASE # 1508

Q You don't remember? A No, sir, I never noticed a window there.

Q Your attention was not called to it? A No, sir.

MR. TALIAFERRO: That is all.

CROSS-EXAMINATION BY MR. McCORMICK:

Q You have talked this case over with Wallis, haven't you? A No, sir.

Q Didn't you tell him you were going to swear there was one hole there? A Was I going to swear? Sure? Why not? Didn't tell him; told my lawyer.

Q Do you remember being arraigned in the Magistrate's Court? A Yes, sir.

Q Do you remember who the Magistrate was? A I believe it was Magistrate Corrigan.

Q Did he ask you any questions? A Only asked me whether I have anything to say.

Q Didn't he tell you that you had a right to make a statement? A If he did, I didn't hear it.

Q And that you were at liberty to waive the making of a statement? A I didn't hear that.

Q But that if you made a statement it could be used against you? A I didn't hear that either.

Q Did you see him write his name on a form or a paper? A No, sir.

Q Didn't you say to the Magistrate, and didn't he write it down in his own hand, when you said it, in reply to his

CASE # 1508

question as to whether you wanted to make a statement? You said, "I don't know what made me do that?" A No, sir.

Q Did you hear this defendant in the Magistrate's Court?

A Yes, sir.

Q Did you hear the Magistrate ask him any questions?

A Outside of asking him whether he had anything to say.

Q Did you hear the Court say to both of you defendants, "Want to say anything?" A Well, that is what I am referring to; yes, he said, "Have you anything to say?"

Q And did you hear Wallis say to Magistrate Corrigan, "It is the first time in my life I have been in a place like that?" A No, sir.

Q Did you hear the Court say, Magistrate Corrigan, "What did you do it for?" A No, sir.

Q Did you hear Wallis say, "I don't know what made me do that?" A No, sir.

Q And did the Court say to you, "Do you want to say anything?" A Yes, that is what I am telling.

Q And did you say, "No, your Honor?" A I says, "Judge, your Honor, I am a married -

Q Answer the question. Did you say that? A No.

Q And then the Magistrate held you for the Grand Jury?

A Yes.

Q You say you have known this defendant, Wallis, for several years? A About two years.

Q Did you hear any conversation when you got to the sta-

CASE #1508

tion house between this defendant and any one else regarding papers that he had thrown away? A No, sir.

Q Didn't you know, until you got to the station-house, what the charge was against you? A Not until we got to the station house, no, sir.

Q Why didn't you tell the officers what the charge was?

A We were trying to. I asked several times, "What do you want?" Can I do any more? I told them it was a mistake, they were making a mistake, or they were crazy, and they never told me what I was charged with.

Q Did you ask them what the charge against you was while you were in that toilet? A I asked them what they wanted me for, certainly.

Q What did they say? A "Never mind, never mind, you know."

Q When the police officers came there didn't they make a charge? A I didn't hear it if they did. Through the officer? No, sir.

Q Why didn't you say to the officer, "Upon what grounds do you arrest me?" A It was the first time I was arrested, and I didn't know what to say.

Q You walked along with the police officer? Without asking why he took you? A I didn't walk with the police officer, I walked with the detectives.

Q Did you see this defendant, on the way to the station house, throw away a memorandum book? A No, sir, I did not.

CASE # 1508

He was in back of me.

Q Were you in the station house when the news boy, the small boy, came in with the memorandum book? A Yes, sir.

Q And he admitted it was his? A I suppose he did, yes, sir.

Q And in that book was written his right name? A Yes, sir.

Q You say you have known him a year and a half? A About that, or two years.

Q I suppose you spent all your evenings at home with your wife and children? A As much as any man does; I have to go to meetings.

Q What meetings do you go to? A The union.

Q You used to attend meetings in the Pennsylvania toilet?

A No, sir, never.

Q Weren't you in there on the evening of the 16th of August? A No, sir.

Q Weren't you there any evening - A I told you, or told the Colonel I was never there until that night.

Q Wait until I ask the question before you answer it. Were you on several evenings in the week preceding your arrest in that toilet room? A Never.

Q Do you know this man Sanderson who takes the tickets for the vehicles that go in there? A How would I know him? No, sir, I don't know him.

BY THE COURT:

CASE # 1508

Q Your place of business was located where? Where was your place of business in New York City at the time you were placed under arrest? A On Mott Street, 28 Mott Street, near Grand.

Q And in going from your home in Jersey City to your place of business, what ferry did you take? A No ferry since the tube is running; I always use the tube on account of getting quicker time.

Q And before the tube was constructed what ferry did you take? A Well, years ago I used to use the Cortland Street Ferry and Desbrosses Street. If I was working downtown I would use the Cortlandt.

Q Do you mean to say since the tube was finished you did not take the ferry in going to business? A Not the Cortlandt Street ferry. On a rainy day I used to take the Desbrosses Street Ferry.

Q But not the Cortlandt? A No, sir.

BY MR. MCCORMICK:

Q Where was your place of business this day? A 28 Mott Street, near Grand.

Q And when you went home from work what ferry did you take? A When I went home from work? I took the tube.

Q What time did you leave your home this evening? A About five or seven.

Q Was it the evening of the 24th of August? A Yes,

CASE #1508

Q And where were you going? A To visit a friend, up-town.

Q Where did your friend live? A 151st Street.

Q What number? A The number is 519.

Q East, or west? A West.

Q What is the number? A 519.

BY MR. McCORMICK:

Q What is his full name? A Mr. William Herring.

Q Herring? A H - e - r - r - i - n - g - .

BY THE COURT:

Q Between what avenues is that, if you know? A Well, it is near Riverside Drive. I get off of the tube and walk over.

BY MR. McCORMICK:

Q Why didn't you go across that evening in the tube?

A Because it was so warm, and I preferred the ferry; that is all.

Q What time was it when you met - where was Wallis when you first saw him that evening? A When he came outside of the toilet room, I noticed him the first time. I seen him that night after we were told to get out.

Q What were you doing when you first saw him? A Standing outside with this man.

BY THE COURT:

Q In other words, you didn't see Wallis until after you had been placed under arrest? A That is the idea. Mr.

CASE # 1508

Weikly seen me as I was going into No. 2.

BY MR. MCCORMICK:

Q You went into Booth No. 1? A Yes, sir/

Q And came out and washed your hands? A Yes, sir.

Q And was it then while you were washing your hands that Wallis went into No. 2? A No, no, after I was finished I went into the toilet.

Q Did Wallis go back into No. 1? A There was no

Q You went into No. 2? A Yes, sir.

Q How long did you stay in there before Wallis went in? A Just about a second or so, because I was just about finished when Wallis came in.

Q How long before Wallis was the man in there? A He came in. He said he was George Weikly from up on the Hill. Did he go in before that? A No, sir.

Q Did you see him looking through the hole? A No, sir.

Q What was the first thing that you heard him say?

A "Hello, Wallis."

Q How could he see you? A He seen me. As I was going in No. 2 he was coming in from the smoking room and seen me going in there. That is what he says afterwards. Of course, I didn't know it then.

Q You had not seen each other for a year and a half, and just happened to meet there by accident? A That is right.

Q And the only thing you put through that hole was the

CASE #1508

toilet paper? A Toilet paper, and nothing further. Who-
ever says anything lies, in my evidence.

Q All these railroad men - you say what? A Well, they
are telling an untruth, if they say the other thing; that
is sure.

Q Hadn't you often seen Wallis down around the Pennsyl-
vania ferry house? A No, sir, never. I seen him three
times since I knew him.

Q This was the fourth time, that night? A Yes, sir.

BY THE COURT:

Q When you say the fourth time, that night, you mean
on three other times you had seen him? A Yes, sir, I had
seen him.

RE-DIRECT EXAMINATION BY MR. TALIAFERRO:

Q Now, Mr. Muller, what time did you get to the station
house that night? A Well, it was about eight o'clock.

Q The station house? A Yes, sir, about eight o'clock.

Q And you say you had never been arrested before?

A Yes, sir.

Q Were you ever charged with a crime before in your life?

A No, sir.

Q And how long did they keep you in the station house
before they put you in a cell? A They took us right back
into a cell that night?

Q But how long after you got to the station house? A Oh,
about five or ten minutes, I guess.

CASE # 1508

Q And how long did you stay in that cell? A Over night, until half past seven next morning.

Q Did you have anything to eat during that time? A No, sir, nothing.

Q Where did you sleep? A On a hard bench that was there for that purpose.

Q Didn't sleep at all? A Didn't sleep a bit.

Q When you got up to the police station in the morning, you went before Magistrate Corrigan? A Yes, sir.

Q And when you went before him did he ask you whether you were guilty or not guilty? A Yes, sir.

Q Did you enter a plea of not guilty? A Always not guilty; down at the desk, downstairs, just as we came in, they took us before some clerk; I believe they took our pedigree.

Q And you entered a plea of not guilty? A Not guilty.

Q He asked you if you did not make a certain statement in answer to the inquiry of the Magistrate, and you started to say what you did say, and you were interrupted. Now, go on and state what it was? A I thought it was a Judge, and I said, "Judge, your Honor, I am a married man, with a wife and two children, and wouldn't have to do such a thing", and nothing else.

Q Did you make any statement there that you don't know what made you do that? A No, sir.

Q Or words to that effect? A No, sir.

CASE # 1508

Q Or anything akin to that? A No, sir. Those were the very words I said, and nothing else.

Q You said you don't know why you would have to do such a thing; you are a married man, and had a wife and children?

A Yes, sir, that is the idea; didn't know why I would have to do such a thing.

BY THE SIXTH JUROR:

Q Will you give us the details of the forming of your acquaintance with the defendant, the first time you spoke to him or he to you; give us the details of your meeting, and how much time you spent with him that night?

A We sat next to one another in the theatre, and ~~was~~ some remark was passed on the stage by one of the actors; it was a vaudeville show - which led us to talk to one another; and Wallis was there, and I was here, and my boy was next to me, and ~~that was~~ about the middle of the show, because I stayed there about three-quarters of an hour at the most, and we came out, and I told him I had to get on the car because it was quite a distance and the little fellow could not walk; I said, "I am going to get on the Jackson Avenue car." He said, "Where do you live?" I told him, Bidwell Avenue. He told me his name, and I told him mine. That is all there was to it.

Q You say the next time he saw you standing in line outside of a moving picture show. Was that the next time?

A No, that was the third time. The second time was when I

CASE #1508

was coming from a meeting in New York.

Q How much time did you spend with him then? A Just a second or so. He said, "Hello, Muller", and I said, "Hello, Weikly."

Q And you didn't see him again until you saw him in front of the moving picture show? A Yes. He said, "Is that your boy?"

Q Didn't you say he said, "Hello, George, is that your boy?" A Yes, that is what he said.

Q That was the third time you had seen him? A Third time.

BY MR. TALIAFERRO:

Q Is your boy named George? A Yes, sir.

Q He is named after you? A Yes, sir.

BY THE NINTH JUDGE:

What number in Main Street did you work? A 28.

Q Near Grand? A Near Grand.

THE Tenth JUDGE:

Q At the first time that you spoke to the defendant, did you address him first, or did he first speak to you? A He spoke to me. He says, "Hello, Muller." You mean the night

of the arrest?

Q Now, when you first made his acquaintance at the theatre, there was some joke about a married couple. He

said, "I am afraid I don't mean me." I said, "Ain't you mar-

ried?" He said, "No."

CASE # 1508

BY THE ELEVENTH JUROR:

Q How did Mr. Weikly know that you were in toilet No. 2?

A He seen me go in, as he was coming in from the smoking room, he said he seen me going in there, and he knew it was me.

BY THE TWELFTH JUROR:

Q Under what name did he introduce himself to you?

A His correct name? George Weikly.

Q Is his right name Weikly? A Yes, sir.

Q I thought you knew him by the name of Watson? A No, I knew him by his right name.

MR. TALLANTRO: His right name is Weikly, but they sometimes pronounce it Weekly.

BY THE THIRTEENTH JUROR:

Q Have you already been going in that toilet when Mr. Weikly saw you and said hello? A Well, I must have said the door open when he seen me.

Q Was he walking past you? A The toilet was locked and he was coming in this way (illustrating), toward the toilet.

BY THE FOURTEENTH JUROR:

Q Now, how sometime after that that you saw him?

A He was right away. The minute he saw I was there, he said, "Hello, Watson."

Q Would he asked you for paper? A Oh, no, not then.

CASE #1508

GEORGE C. WEIKLY, the defendant herein,
called as a witness in his own behalf, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your correct name? A George C. Weikly.

Q How do you spell Weikly? A W-e-i-k-l-y.

Q Where do you live? A 26 Clark Avenue, Jersey City.

Q How old are you? A 26 this August.

Q And you live in Jersey City? A Yes, sir.

Q Who do you live with in Jersey City? A With my
parents.

Q Your father and mother? A Yes, sir.

Q And she also lives at your house beside your father?

Q Mother? A My aunt and two brothers.

Q Your aunt and two brothers? A Yes, sir.

Q How old are your two brothers? A One is sixteen and
one is ten.

Q Your aunt is a sister of your father or mother? A

mother.

Q How long have you been living at that place? A About
fifteen years, in that one house.

Q Is it a private house? A Yes, sir.

Q And belongs to your father? A Yes, sir.

Q What business were you in at the time of your arrest?

A Employed on the Pennsylvania Railroad.

CASE # 1508

Q How long had you been in that business? A Five years for that company.

Q Had you ever been discharged or expelled or suspended?

A No, sir.

Q During the whole of the five years? A Yes, sir.

Q And your father is a locomotive engineer on the Central Railroad of New Jersey? A Yes, sir.

Q Have you ever been arrested for a crime? A No, sir.

Q Or charged with a crime at any time in your life time?

A No, sir.

Q You are a single man, are you? A Yes, sir.

Q Do you know George Muller, who is charged with this crime also? A Yes, sir.

Q Where and under what circumstances did you first get acquainted with him? A In the Montecello theatre, in the fall of the year, about two years ago; we were in there at the show, and we spoke about the show, about a few jokes that was passed, and he took the car home, and I left him and walked home, as I only had a short ways to go.

Q Is that the first time you ever saw him? A Yes, sir.

Q Did you know there was such a man as George ^{Muller} ~~Hendy~~ up to that time? A No, sir.

Q Who was with him? A His little boy.

Q How old? A I judge about six or seven years old at that time.

CASE # 1508

saw him when I was going home from work, or I was going to work, and he was coming home from a meeting, he told me; I don't know.

Q At what place was it? A At the ferry, Jersey City.

Q What was he doing, and what were you doing? A I was going to work; I was getting off the car and he was just getting on.

Q And what was said between you? A Just asked each other where we were going. I said, "Where have you been?" I bid him the time of day and asked him where he had been, and he said he was coming from a meeting, and he asked me where I was going, and I said I was going to work.

Q Is that all that was said? A Yes, sir.

Q What was the next time you met him? A When he was standing in a line at the theatre, the Log Cabin theatre on Jackson Avenue, or Ocean Avenue.

Q When was that? A That was in June, a month from the time of the arrest.

Q June? A June or July.

Q Of last year? A Yes, sir.

Q About a month or two before the arrest? A Yes, sir.

Q What was said between you at that time? A I asked him if he was going in the show, and asked him if that was his boy, and told him his boy was getting very big, and he said, yes, he was growing.

Q Was that the last time you saw him before the arrest?

CASE #1508

A Yes, sir.

Q On the night of the arrest what time did you leave home

A 7:15.

Q And how far did you live from the Jersey Ferry? A About thirty minutes ride on the West Side avenue trolley line.

Q And did you take that trolley line? A Yes, sir.

Q And go over the ferry at Cortlandt Street? A Yes, sir.

Q Where were you going to? A I was going to 33rd Street depot.

Q For what purpose? A I was going up there to look in my locker for a pair of gloves I had lost and couldn't find, and as I ran out of both terminals, I have lockers at both places, and as I make a extra trip I am liable to leave my stuff there.

Q Where had you been the night before? A The night before?

Q Yes, sir? A I had been home.

Q The night before? A I had been working. I came out at 11:50 at night, and got back at eight o'clock in the morning.

Q Did you go to Philadelphia the night before at 11:15?

A 11:50.

Q And got back from Philadelphia at eight o'clock the

A Yes, sir.

CASE 1508

Q Why was it you did not take the tube to the 33rd Street depot instead of going by the Cortlandt Street ferry?

MR. McCORMICK: Objected to.

THE COURT: I will allow it.

Q Why was it? A Why, because it being a hot, sultry night, and I like the air, on account of head trouble - I have it even now; I can't stand to be inside; I am all perspiring now from being indoors - I have a passage in the nose that is obstructed by a growth, and when I get in the tunnel I wilt with the heat.

Q Have you had an operation performed on your nose?

A Yes, sir.

Q By a surgeon? A Yes, sir.

Q How long since?

MR. McCORMICK: Objected to.

THE COURT: You need not go into that any further.

Q In going by the tube to the 33rd Street ferry, would you have to pay fare? A Yes, sir.

Q And would you have to pay any ferry across Cortlandt Street? A No, sir. The main reason is because I could take a nice ride in the elevated, in the air, and the locker room at the 33rd Street depot is at the 8th Avenue entrance, and have only one block to walk to the locker room.

Q At the time of this arrest, you were actually employed as a brakeman by the Pennsylvania railroad? A Yes, sir.

Q After you got on the ferry boat at Jersey City, cross-

CASE # 1508

ing the Hudson River, what part of the ferry boat did you go in? A I rode on the top deck all the way over.

Q And when you got to this side what did you do? A I got off the top deck; I waited for the people to pass out, because I had to go to the toilet - people passed out, and they opened the gates, and I walked down the stairs, through the waiting room, and to the toilet, and as I came through the smoking room entrance of the toilet, I saw Muller going into toilet No. 2, and I recognized him.

Q As you went out of the smoking room into the toilet room - when did you see Muller first? Were you in the smoking room, or the toilet room when you first saw him? A When I turned the door at the entrance of the toilet room from the smoking room going into the toilet, I saw Muller going into ~~the~~ toilet No. 2, just as I turned that door.

Q Was his back turned towards you? A Yes, sir.

Q His face was not turned towards you? A No, sir.

Q Then you saw him and he didn't see you? A No, sir.

Q Am I correct about that? A Yes, sir.

Q Then you went into toilet No. 1? A Yes, sir.

Q State to the Court and jury what took place there?

A I went into the toilet and I took off my coat and hung up my coat, and I tried for the paper, after I sat down, and found there was no paper there, and I asked for some toilet paper off Muller. I am ahead of my story. First, I told him

CASE # 1508

I knew him. I said, "Hello, Muller". He said, "Hello, who are you?" I said, "Weikly, from the hill", and he asked me where I was bound for. I says, "The 33rd Street depot." He said he was going to see a friend uptown who just had a little baby boy and was going to see him. I said, "Have you any toilet paper?" He said, "Yes, there is plenty here." I said there is either none here or else this machine don't work"; and he passed his arms through the hole in the partition, and I took it, and just as I took the paper the slats in the front of my door - some of them either broken one or cut one off, but there is a place where it's off, and you can see clear to the smoking room, and as I took the paper and unrolled it to get more, I saw Carver turn the door of the smoking room, looking from the waiting room, and he came and stopped at the doorway and he looked; I noticed every action that he pulled off - that he did. He went to work and looked at the floors of the toilet, and then he pulled his pants, like this (illustrating), and monkeyed with his belt, and he tiptoed over to Muller's door, and he opened his door. He opened my door.

Q When you went in there you took off your coat? A Yes, sir.

Q And did you hang your coat on that nail in the toilet?

A Yes, sir.

Q And did you take your hat off? A No, sir.

Q What kind of hat did you have on? A Soft hat, slouch

CASE # 1508

hat.

Q Broad, or narrow brim? A It was not a very large brim, about an inch and a half, I should judge.

Q Did you keep your hat on? A Yes, sir.

Q Did you try to get paper out of the toilet box in the room you were in? A Yes, sir.

Q Didn't you succeed? A No, sir.

Q If not? A I would not come out. I turned the handle, but it did not work. It would not work.

Q Did you try it again? A Yes, sir.

Q Now, sir, about the time that you were buttoning up your pants, just finished, Carney came, and what was he doing? A Well, after I had taken the paper, when Carney came in, I noticed every movement he made. When he went to Muller's door, I was just using the paper, when he got to Muller's door.

He opened Muller's door, and he came and opened my door. Then, when he came and opened my door, I looked right in his face, and I was just using paper.

Q At the time Carney opened your door -

BY THE COURT:

Q Were you seated on the seat at that time? A Yes, sir.

Q In the act of discharging your bowels? A Just getting through.

Q Had you used the paper that was given to you by Muller?

A Just using it.

CASE # 1508



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I asked Dunn and Gardner later if they would tell me what I

was being arrested for. They said, "You know. There is no use explaining it; you will find it out if you don't know it."

Q Did you see any other people or anything? A I asked them if they were. They said, "No, sir." I said, "What did you see?" They said, "Nothing."

Q Did you see any other people or anything? A I asked them if they were. They said, "No, sir." I said, "What did you see?" They said, "Nothing."

Q Did you see any other people or anything? A I asked them if they were. They said, "No, sir." I said, "What did you see?" They said, "Nothing."

Q Did you see any other people or anything? A I asked them if they were. They said, "No, sir." I said, "What did you see?" They said, "Nothing."

Q Did you see any other people or anything? A I asked them if they were. They said, "No, sir." I said, "What did you see?" They said, "Nothing."

Q Did you see any other people or anything? A I asked them if they were. They said, "No, sir." I said, "What did you see?" They said, "Nothing."

BY MR. TALLAMERD:

Q You saw him point, but I didn't hear what he said?

A No, it brought my attention to the hole.

Q As I understand it, Carney and Dunn had you over to one side talking to you? A Yes, sir.

Q Was it Dunn or Carney that asked you how you were fixed, and whether you had any money or what? A Carney.

Q What tone of voice did he use? A Very low tone, kind of hushed voice.

1508
CASE

Q After you got to the police station, what took place there? A At the precinct, the second precinct?

Q Yes? A They took our names, and we were searched, and when the boy came in ~~xxx~~ with my books, and so forth, why, they asked me if I was a Pennsylvania Railroad employee, and I said, "Why, no, I am no employee of the Pennsylvania". I said, "I am a Jersey Central man", and then, after they searched us I hear in the conversation, when we first went up, Dunn was speaking to the sergeant, and he told them that sodomy was the charge.

Q Was that the first time you knew what you were arrested for or charged with? A Yes, sir.

Q The first time during the whole of the performance?

A Yes, sir.

Q When you were carried to the police magistrate? A Yes, sir.

Q Mr. Weikly, on that night, did you take the penis of George Muller in your mouth? A I did not, no sir.

Q Did you touch it with your lips, or your tongue, or any part of your face? A No, sir, I did not.

Q Did you place it through that hole in the partition between No. 1 and No. 2? A No, sir.

Q You did not? A No, sir.

MR. KATAPETROS: That is all.

CASE # 1508

Q Have you and Muller any mutual friends? A No, sir.

Q Did you ever visit his house? A No, sir.

Q Did he ever visit your home? A No, sir.

Q You met him only three times? A Yes, sir.

Q ~~Kx~~ You call him George and he calls you George?

A Well, I called him Muller until the time of this happening that is all.

Q He called you George that night? A Yes, sir.

Q You only met him three times? A Three times before the arrest, yes, sir.

Q The first time was in the Monticello theatre? A Yes, sir.

Q How long were you in the theatre that night? A Oh, about - the show - there is two shows there a night.

Q How long were you in that theatre that night? A About an hour and a half.

Q What part of the theatre did you sit in? A It was in the orchestra, about five or six rows from the front.

Q Were you alone? A Yes, sir.

Q And that was how long ago? A About a year and a half or two years.

Q And he sat in the seat next to you? A Yes, sir.

Q And he had a boy with him? A Yes, sir.

BY THE COURT:

Q Did he sit on your right hand or your left hand? A On my right hand.

CASE # 1508

Q Between you and the aisle? A Yes, sir, I was the closer to the aisle.

Q You were the closer to the aisle? A Yes, sir.

BY MR. McCORMICK:

Q What was the conversation you had? A One of the actors cracked a joke about the married men, and I said I was glad I was not married, because I seen him with his child, and he said something to me, "I guess she must mean me", he said.

Q Go on and give all of it? A We didn't talk any more of the show, or anything, but when we came outside he told me where he lived, and his name, and I told him where I lived, and my name.

Q Is that all the talk you had? A Yes, and he said he didn't walk on account of it being up on Jackson Avenue, and he took the car and I went home.

Q When you came out, without any other talk at all, you asked each other for your addresses? A Sir?

Q That is all the conversation there was; you simply asked each other addresses? A Well, we had quite a conversation inside, and we thought we would like to know each other.

Q What was the conversation? A Just about the show and the general run; that is all.

Q How did you know he wanted to know you better? A Sir?

Q You said you would like to know each other better;

CASE # 1508

how did you know he felt that way? A Well, I don't know.

Q Well, did he say so? A No, he didn't say so.

Q How long after that meeting in the Monticello theatre was it that you saw him the next time? A I can't say, not knowing for certain what time it was. It was in the fall of the year when I met him at the Monticello.

Q That was the fall of 1910? A Yes, sir, and then I met him after that coming home from work; I was going to work, and he was coming home from a meeting.

Q You were going to work; what time of day was it?

A It was about eleven o'clock at night.

Q Which side of the river? A Jersey City side.

Q Eleven at night? A Yes, sir.

Q How long ago? A Well, that was in the winter time.

Q Well, this winter or the preceding winter? A The preceding winter.

Q It was a little over a year ago? A Yes, sir.

Q How long a conversation did you have with him at that time? A Only asked him where he was, and so forth, and he asked me where I was going, and I told him I was going to work.

Q Was this in the toilet? A Right there at the trolley station at Jersey City.

Q Was it in the toilet? A There is no toilet there.

Q Is that all the conversation you had with him? A Yes, sir.

CASE 1508

Q That is the second time you met him? A Yes, sir.

Q When was the third time, in the Log Cabin theatre?

A The third time was in July, the month previous to this arrest.

Q July, 1911? A Yes, sir.

Q And what time of day was it? A Way, it was in the evening, about seven o'clock.

Q Tell us the details of that meeting? A He was in line with his boy, and as I came along I didn't see him, and he spoke to me.

Q What did he say to you? A And when I spoke to him. He said, "Hello", and I said, "Hello", and asked him if that was his boy, and he said, "Yes", and I said, "He is growing quite large."

Q Then what happened? A He said, "I saw you."

Q You only spoke to him? A Yes, sir.

Q Or half a minute? A Yes, sir, a few seconds.

Q And the next time you saw him was when you happened to meet him on the corner of the Pennsylvania station? A Yes,

Q You were in booth No. 27? A Yes, sir.

Q And he was in booth No. 27? A Yes, sir.

Q And as you walked from the smoking room into the toilet did you see him going out? A Yes, sir.

Q And he was in booth No. 27? A Yes, sir.

CASE 1508

Q At what point, or at what time, was it that you said, "Hello", to him? A As I took off my coat.

Q In other words, you walked the whole length of the toilet room and into No. 1, shut the door, and took your coat off, before you spoke to him? "No" or "Yes"? A I didn't get up to him until we got in there.

Q (Question read by the stenographer as follows): In other words, you walked the whole length of the toilet room and into No. 1, shut the door, and took your coat off, before you spoke to him? No or yes? A I didn't speak to him until I came up to him.

Q How far in front of you was he when you first saw him? A Why, as I turned the smoking room door, he was every bit of from here to that open gate (indicating), going into No. 2 toilet.

Q That is just what I said, he was going into No. 2 when you first saw him? A Yes, sir.

Q And you were about thirty feet from him at that time?

A Yes, sir.

Q And then you walked thirty feet, opened and passed into No. 1, and shut the door, and took your coat off, before you said a word to him, is that right? A Yes, sir.

Q Then what was the word you said to him? A "Hello, Muller", and he said, "Hello, but who are you?"

Q Now, isn't it fair to say somewhere between the

CASE # 1508

room, in the week preceding your arrest? "No" or "Yes"?

A No, sir.

Q How many times had you ever been in that toilet room before? A Well, I couldn't remember, but I know I have never sat down there at all, to my knowledge. I went through there to urinate, that is all.

Q Were you ever in one of those booths that have a hole bored in the side of it? A No, sir.

Q Did you ever bore a hole or help any one else bore a hole? A No, sir.

Q Do you know any men who frequent in the evenings the toilet of the Pennsylvania Railroad at Cortlandt Street? A No, sir.

Q Do you know a man named John Hannan? A Hannan?

Q Yes? A I don't believe I do, no, sir.

Q Hasn't a man named John Hannan been talking to you in the corridors of this building during the last week? A Who?

Q John Hannan? A If he did I didn't know his name; that is all.

Q And didn't he talk to you about things that have happened in the toilet of the Pennsylvania Railroad? A No, sir.

Q Do you know a man named Charles W. Valley? A Never heard of him.

Q Who was in the habit of frequenting the toilet of the

CASE 1508

Pennsylvania at Cortlandt Street? A No, sir.

Q Do you know a man by that name who lives at 643 Jersey Avenue, Jersey City? A No, sir.

Q A man 25 years of age? A No, sir, never heard of the man.

Q Don't you know a man named Hannan, who lives at 123 Clifton Place, Jersey City? A No, sir.

Q Have you talked with any men in the corridors of this building in the last two weeks who knew anything about the toilets of the Pennsylvania Railroad? A No, sir, I have not.

MR. TALIAFERRO: Now, I have not objected to that, but I assume the District Attorney will follow that up with those men. If he does not it is certainly very prejudicial.

MR. McCORMICK: I will call them ~~in~~ here, if you will let them testify.

MR. TALIAFERRO: All right.

Q In the Magistrate's Court, did the Magistrate inform both of you men that it was your right to make a statement in regard to the charge against you? A No, sir.

Q He did not? A Never did at all. If he did I did not hear it. I can hear everything that is -

THE COURT: Just answer "yes" or "no", or you don't remember.

CASE # 1508

Q Did you hear Müller say, "I don't know what made me do that"? A No, sir.

Q Didn't you make some statement to the officers in the toilet, to the effect that you had committed similar acts before that? A No, sir.

Q That you were the black sheep of your family? A No, sir.

Q Do you mean to say when they put you under arrest there was a considerable conversation in the toilet room, a police officer was called, and that he placed you under arrest, anybody telling you why? A No, sir.

Q Why didn't you say to this police officer, "What is the charge against me?" A Well, I knowed he didn't have nothing to do with the arrest.

Q Why didn't you protest against his placing you under arrest without telling you what it was for? A I had quite a conversation with him on the way walking up, but I don't recall it, and I don't know what it was, so I wouldn't try to repeat it.

Q Didn't anybody, before you got to the station house, tell you what you were charged with? A No, sir.

Q Why didn't you ask? A I did. I asked Dunn and Carney to tell me what I was arrested for.

Q Didn't you ask the police officer? A The police officer I knew didn't know what they were doing.

Q Isn't it true that to these officers of the Pennsyl-

CASE #1508

vania Railroad you admitted that you had committed the crime of sodomy? A No, sir.

Q And begged them to let you off? A No, sir.

Q And that instead of their saying anything about money, the only conversation about money came from you and your father? A No, sir.

Q You and Muller were arraigned before Magistrate Corrigan, were you not? A Yes, sir.

Q And the only witness against your people who was examined by the Magistrate was Carney? A Yes, sir.

Q The Magistrate did not even call for any other witnesses, did he? A No, Carney gave the names.

Q And he asked Carney what the charge was, and Carney told him? A Yes, sir.

Q And then didn't the Magistrate say to Carney, "What did they say when you placed them under arrest?" Did you hear the Magistrate ask that question? A No, sir, I did not.

Q Did you hear Carney make this answer: "Wallis asked me not to do anything in the matter. He admitted to it and said it was due through weakness which he has been for a long while." Did you hear that? A No, sir, the only thing that was asked me was what I had to say.

Q That was asked Carney. Didn't Carney say that to the Magistrate? A I didn't hear him say anything like that.

1508
CASE #

Q Did you hear the Magistrate say to Carney? "What did the other fellow state?" Referring to Muller? A No, sir.

THE COURT: Never mind about that.

Q Did you hear the Court address you two defendants and state: "Do you want to say anything?" Answer "They asked us separately." "No" or "Yes"? A No.

Q Didn't you say to Magistrate Corrigan "It is the first time in my life I have been in a place like that?" A No.

Q Did you hear Magistrate Corrigan say to you, "What did you do it for?" And did you make this reply, "I don't know what made me do that?" A No, sir.

Q And did you hear Muller say he had nothing to say?
A That was me that said that.

Q It was you who said that? A Yes, sir.

Q What did Muller say? A Muller said he was a married man with two children, and wouldn't have to do such a thing.

Q Why would a man with two children not do differently from any other man, as to having to do a thing of that kind?

A I don't know; it has nothing to do with me.

MR. TALIAFERRO: As a question of argument, I might answer that myself. St. Paul says -

THE COURT: Well, it is on the record. We will let it stand that way.

Q This night you left home at 7:15? A Yes, sir.

CASE # 1508

Q How far is your house in New Jersey from the ferry that leads to the Cortlandt Street ferry? A Thirty minutes ride.

Q You live on the Heights? A Yes, sir.

Q And you got down to the ferry about what time?

A 7:45; got the 7:45 boat, I believe; I am not quite sure.

Q You got over here a little before 8.? A 7:55; the boat generally takes 10 minutes.

Q You were on the upper deck? A Yes, sir.

Q And you walked down? A Yes, sir.

Q Into the toilet room? A Yes, sir.

Q And when you saw Muller in front of you, he was thirty feet away? A Yes, sir.

Q And he was ^{just} going in No. 2? A Yes, sir.

Q And you didn't see his face? A No, sir.

Q But you recognized him as a man whom you had met on three occasions? A Yes, sir.

Q Only? A Yes, sir.

THE COURT: He has said that already.

MR. McCORMICK: That is all.

CASE # 1508

13.
RE DIRECT EXAMINATION BY MR. TALIAFERRO:

Q Weikly, you heard the testimony of Carney here, didn't you? A Here, yes, sir.

Q Did you hear what he testified that you said you gave the thing to him? A Yes, sir.

Q Did you hear what he testified as that? A No, sir.

Q Did you hear what he testified as that, or myself, or any other person?

Q Did you hear what he testified as that, or to any one else? A I didn't hear what he testified as that.

Q I mentioned it to you, didn't I? A Sir?

Q Did you hear that from the witness, or did they?

Q Carney mentioned it to me, didn't he?

Q Had you mentioned it to me before that time? A No, sir.

Q In the Magistrate's Court, I ask you the question if you did not use this language: "I don't know what made me do that?" Did you use such language as that? A No, sir.

Q Did you hear Muller make use of this language in the Magistrate's Court, "I don't know what made me do that?"

A No, sir.

Q Word for word and letter for letter. Did you make that statement, or did you hear Muller make that statement?

A No, sir.

Q The District Attorney has asked you the question why you did not demand to know what you were arrested for of the

RECORDED
CASE # 1508

police officer. Was the police officer there when these men first came in there? A No, sir.

Q How long after did the police officer come? A After they were all in there, at about five minutes or three or four.

Q And you did not see the police officer at that time?

Q Did you see the police officer at that time?

A No, sir.

Q Did you see the police officer at that time?

A No.

Q Did you see the police officer at that time?

A No, sir.

Q Did you see the police officer at that time?

A No, sir.

Q Did you see the police officer at that time?

A No, sir.

Q Did you see the police officer at that time?

A No, sir.

Q Did you see the police officer at that time?

A No, sir.

Q Did you see the police officer at that time?

A No, sir.

Q Did you see the police officer at that time?

A No, sir.

CASE # 1508

And at what time was he arrested? A Well,
because Carney acted
I didn't know whether

Q Now then did the windows were fixed?
A He asked me how my window were fixed.
A But not your window.

Q You say there was a window? A Well, yes,
in the room.

Q Was it very close to the room? A Well, I could
not say about that. I didn't take my hat off. I
took it out of the room.

Q Did you notice whether the windows were open?
A There were no windows in my knowledge.

CASE 1508

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

Q Didn't it strike you as strange that there were no windows open on a hot August night? A No, sir.

Q You didn't look at the windows? A No, sir.

Q You did not remove your hat? A No, sir.

Q You sat in the toilet room with your hat on? A Yes, sir.

Q The night you saw Muller at the moving picture theatre standing in line, did you attend the show that night? A Yes, sir.

Q You went inside? A The night I met him outside with his boy?

Q Not at the Monticello Theatre, at the moving picture show? A No, I did not.

Q Did you go inside? A No, sir.

Q You passed on? A Yes, sir.

Q When you went from the ferry house to the police station did you go first or did Muller go first? A Muller was with the four detectives, first I come behind.

Q You were with the officer, in the back? A Yes, sir.

Q There had been no intimation up until the time you appeared in the police station what the charge was against you? A No, sir.

Q And there they gave the charge by the single word.

CASE # 1508

"sodomy"? A Yes, sir.

Q You knew the meaning of the word? A Well, I had an idea, but I didn't know the correct meaning.

THE COURT: Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you.

The Court stands adjourned until to-morrow morning at half past ten.

(The Court accordingly took a recess until tomorrow, Tuesday, March 19th, 1912, at 10:30 A. M.)

CASE # 1508

THE PEOPLE, vs. GEORGE WALLIS.

New York, Tuesday, March 19th, 1912.

TRIAL CONTINUED.

GEORGE WALLIS, the defendant herein, being recalled in his own behalf, testified as follows:

EXAMINATION BY THE PROSECUTOR:

Q Now, Wallis, how tall are you? A How tall?

Q Yes, about five feet nine and a half.

Q And what is your weight? A 190 pounds.

Q 190 pounds? A Yes, sir.

Q And have you been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q Where is it? A That's here. (Witness produces card.)

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

Q And you have been in the city and have been in the city at the time that you were arrested in court? A Yes, sir.

A Yes, sir.

CASE # 1508

Q And did you sit in that same position you did at the time of the night of the arrest? A Yes, sir.

MR. TALIAFERRO: That is all.

CROSS EXAMINATION BY MR. DEBONLISK:

Q Were you down in the corridors of this building about two or three weeks ago when there was a sodomy case on trial in Part IV?

MR. TALIAFERRO: I object to that, and I move your Honor to discharge the jury.

THE COURT: I will deny the motion. I will overrule the objection.

MR. TALIAFERRO: I except.

THE COURT: I will deny the motion, and I will overrule the objection. I want to be certain to put it to something else.

MR. TALIAFERRO: I understand, but the allusion to the fact that a case similar to this was tried is certainly very prejudicial to these defendants.

THE COURT: It is a case involving the same crime, rather a similar charge, a case involving a charge of sodomy.

MR. TALIAFERRO: Then your Honor overrules the objection?

THE COURT: Yes.

Q Were you in the building?

CASE # 1508

Q Did you have a conversation with a member of the jury panel of Part IV? A Not me, no, sir.

Q Didn't you ask a member of that jury panel whether it was possible to fix a jury? A Not of that panel. He told me he was not on the jury.

Q "Yes" or "No"? A I spoke to a party of that kind, yes, sir.

Q What did you mean by saying you did not? A I will tell you the way I spoke about it.

Q What did you say? A He told me he was a jurymán, that he was to be impaneled next week, or something of that sort, and I asked him, I said, "I was never in a court proceeding in my life, and I have never been around a court, and I have heard an awful lot of fixing a jury," and I said, "Do you know anything about it? Do they ever do anything like that?" and he said, "Yes, I have been on them when they have been fixed".

MR. TALIAPFERRO: I object to that evidence; the question and the answer, and I move to strike it out, on the ground it is totally irrelevant and immaterial to this issue.

THE COURT: I will tell you what I will do, Colonel. I will entertain a motion, and I will rule upon it, one way or the other, at the close of the case.

MR. TALIAPFERRO: Then I reserve further motion.

THE COURT: You may consider that the motion is held

CASE # 1508

under advisement.

Q Why did you ask any juror that question? A Why? Because I was wondering if it was done, and I wanted to know, and I thought if it was done he would know, and he told me yes, that he has been on them when they have been reached. That is all there is to it.

MR. TALIAFERRO: I make the same motion.

THE WITNESS: I was wondering about the Sweeney case.

THE COURT: Now, you have answered the question.

I will reserve my decision.

RE DIRECT EXAMINATION BY MR. TALIAFERRO:

Q Now, Mr. Weikly, were you making that inquiry with a view to finding out whether a jury might be fixed against you?

A Yes, sir.

Q Not in your favor? A No, sir.

Q Did you make any suggestion of any kind that you had any idea of trying to fix a jury in your behalf? A No, sir.

Q None whatever? A No, sir.

MR. TALIAFERRO: That is all.

RE CROSS EXAMINATION BY MR. MCCORMICK:

Q Who did you think might fix a jury, or try to fix a jury against you? A Well, I know the Pennsylvania Railroad Company is a big corporation, and I know they have got money; that is a sure thing.

Q Don't you know that the people who are prosecuting

CASE # 1508

this case are the People of the State of New York, represented by the District Attorney? A Yes, I know that, too.

Q Do you think they would fix the jury? A Well, I did not think that they would, no, sir.

MR. TALIAFERRO: I ask you furthermore if you did not know at that time, and don't you know now that the Pennsylvania Railroad Company--

MR. McCORMICK: I object to a leading question.

MR. TALIAFERRO: It is cross examination. I have a right to lead him.

THE COURT: I will hear your question.

Q Didn't you know then and don't you know now, that the Pennsylvania Railroad is managing and controlling and conducting this prosecution? A Yes, sir.

MR. McCORMICK: Well--

THE COURT: That ends that now. If you want to make a motion to strike out the answer, I will entertain any motion.

MR. McCORMICK: I move to strike out the answer.

THE COURT: I will strike it out, for the purpose of entertaining such objections to the question as you think proper to make.

MR. McCORMICK: I object to the question.

THE COURT: I sustain the objection on the ground it assumes something not in evidence.

MR. TALIAFERRO: I except.

CASE # 1508

BY THE SIXTH JUROR:

Q Will you repeat for us, please, the first thing that you said when the door of No. One was opened, and you were asked to come out? A When it was first opened? He didn't ask me to come out the first time. The first time he opened the door, he said, "You are a nice son of a--"

MR. TALIAFERRO: Repeat what he said.

THE WITNESS: "You are a nice son of a bitch," and he made a shot at my head, and only that the bowl of the toilet was in the way, I would have got it and it knocked off my hat.

Q What did you say? A I said, "What the Hell is the matter with you?"

Q Are you accustomed to the use of cigarettes? A No, sir.

Q Don't use them at all? A No, sir.

Q Never smoked them? A No, sir; I used to smoke them occasionally, but never smoked them to excess.

Q Don't smoke them now? A No, sir.

Q Are you in the habit of drinking intoxicating liquors? A No, sir.

Q Not at all? A No, sir.

Q Never tasted them? A Oh, I have taken a drink occasionally, but not to excess.

BY MR. TALIAFERRO:

Q Are you in the habit of using any drink? A No, sir.

CASE # 1508

Q When you are on duty as a brakeman of the Pennsylvania Road are you permitted to use any cigarettes? A The book of rules don't allow anybody to smoke cigarettes at all.

GEORGE MULLER, being recalled on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q Mr. Muller, I omitted to ask you one question. Did you, at the time you were in toilet No. 2 take a piece of paper, tissue paper, or any kind of paper, and paste it over the hole? in the partition between No. Two and Three?

A No, sir.

Q Did you or not? A No, sir.

Q There was a man in No. Three, I believe you stated?

A Yes, sir.

Q During the time you were in No. 2? A Yes, sir.

Q Now, I will ask you a question which has been suggested by the jury. Do you smoke cigarettes? A No, sir, never.

Q Have you ever smoked cigarettes? A Never.

Q Are you in the habit of drinking intoxicating liquors?

A No, sir.

Q Or were you at that time, or before that time? A No, sir; I never drink at all, very little of it I do.

Q Have you been addicted to any drugs of any kind? A No, sir.

CASE #1508

JAMES N. WICKLY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:
BY MR. TALIAFERRO:

Q What is your full name? A James N. Wickly.

Q Where do you live? A 28 Clark Avenue, Jersey City.

Q How old are you, Mr. Wickly? A Fifty two years old on the third day of February last.

Q Have you a family? A I have, sir.

Q What family have you? A Four sons.

MR. McSOLICK: Objected to as immaterial and irrelevant.

THE COURT: I will allow the answer to stand.

THE WITNESS: Four sons.

Q Any daughters? A No daughters; lost two daughters.

Q How many of your sons live at home with you? A Three.

Q Which three are they? A This defendant, George, being the oldest at home, and the young man sixteen years old, and another one, I think, eleven.

Q And your wife, of course? A Yes, sir, and her sister, her maiden sister lives with us.

Q And your wife is here in attendance upon the Court, is she? A Yes, sir.

Q What business are you engaged in? A Locomotive engineering.

Q On what railroad? A On the Jersey Central, between New York and Philadelphia.

8091
FBI
CASE 1508

Q Before you were locomotive engineer, what business were you engaged in? A I was in the United States Navy. I served in special service, under Admiral Schley, who was then a commander.

Q How long were you in the Navy under Admiral Schley? A I was in the Navy some three years, in that neighborhood, but not all the time with Admiral Schley.

Q How long have you been an engineer on the Central railroad of New Jersey? A Since 1887, but previously employed in the capacity of fireman, since 1880.

Q As a locomotive engineer on the Central Railroad of New Jersey, what character of duties are you charged with?

THE COURT: Why go into that?

MR. TALIAFERRO: I will withdraw that.

Q Mr. Weikly, do you remember the 24th of August last, when your son was arrested? A I do, sir.

Q And at that time and previous to that time, what was his habits as to staying at home nights?

MR. McCORMICK: I object to that as immaterial and irrelevant.

THE COURT: Objection sustained.

MR. TALIAFERRO: I except.

Q I will ask you to state what his habits were as to drinking or smoking? A My boy never was drunk, to my knowledge, nor never indulged in intoxicating liquor. He did smoke

CASE #1508

occasionally, but never to excess to my knowledge.

Q Do you know whether he ever smoked cigarettes or not?

MR. McCORMICK: I object to this line of examination as immaterial and irrelevant.

THE COURT: I will sustain the objection.

MR. TALIAFERRO: Exception.

Q Where were you when you heard of this arrest? A 207 Wooster Street, New York.

Q Wooster Street? A Yes, sir.

Q When was that? A On August 25th, on a Friday.

Q The arrest took place on the night of the 24th, which was Thursday I believe? A Yes, sir.

Q What did you do when you heard of this arrest? A My wife called up--

THE COURT: Not anything that was said to you.

What did you do?

Q What did you do? A I went to the Tombs.

Q And did you see your son there? A No, sir, not on that day.

Q I mean what did you do in regard to going to the place where the arrest took place? A I went to the Tombs, to find out where the arrest had been made, and what the trouble was. I found out there that he had been arrested by an officer located in the Second Precinct, and on going there they referred me to--

MR. McCORMICK: I object to all this.

THE COURT: Don't tell us what was said.

CASE # 1508

tell us what was said.

Q You got information there, and upon that information you went to where? A 109 West Street.

Q And what is 109 West Street? A It is the headquarters of the Police Department, so I was informed.

Q Of the Pennsylvania Railroad? A Yes, sir.

Q And who did you find there? A I found there a clerk just one clerk.

Q What was his name? A Thompson.

Q Did you see Captain Dunn there? A I did.

Q At what time in the afternoon or night did you see Captain Dunn? A I arrived there about ten minutes to five, and waited there some twenty minutes or over, before a man came in, walked into a side room, and the clerk nodded his head to me, and that was informing me that that was the captain. Then I entered his room, and talked to him alone.

Q And where did you go with Captain Dunn? A When we finished talking, I went from there directly across to the toilet room.

Q (By the Court) When you say the toilet room, what toilet room do you mean? A In the Pennsylvania Railroad ferry.

Q (By the Court) At what ferry? A Cortlandt Street.

Q That is the same toilet room in which your son was arrested? A Yes, sir.

CASE # 1508

Q You say Captain Dunn went there with you? A Yes, sir.

Q Is Captain Dunn the same man who was a witness in this case on behalf of the People? A Yes, sir.

Q After you got in that toilet room, did you have any conversation with Captain Dunn? A I did.

Q What did you say, and what did he say to you? A I had had--

THE COURT: No, that is a plain question.

A (Continuing) Captain Dunn pointed out to me the reason why he had there now, as he claimed, right. He says, "There is no use on your trying to do anything in this matter". He says, "There is the violence against the men", and he pointed to a hole in the ceiling. He says Carney-- I didn't know who Carney was at that time-- he says, "My man Carney was up on top, and looked through that hole down at these men in the booth, and I had a ladder on the outside of the building, on which I stood, and looked through the glass down into the booth".

Q Had you ever heard the name of Carney before that time?

A Yes, sir, I had.

Q Where did you hear of it? A On making inquiries as to the men in the police department, I heard a great deal about Carney.

MR. McCORMICK: I object.

Q All I want to know, Mr. Weikly,-- you are a little bit deaf, are you not? A Yes, sir.

CASE #1508

Q If you don't hear me call my attention to it? A Thank you.

Q All I want to know is whether, previous to that occasion, you had ever heard of such a man as Carney? A No, sir.

MR. McDONALD: I object to that.

THE COURT: I will allow it.

THE WITNESS: I never did.

Q You had not? A No, sir.

Q Had you ever previous to that occasion, heard of a man named Nutter? A Never had, sir.

Q Or a man named Bangs? A Never had.

Q At the time he told you that his man Carney was upstairs over these toilets, did he say anything about a man by the name of Nutter? A No, sir.

Q Or Bangs being up there? A No, sir.

Q Was their names mentioned at all? A No, sir; only one name mentioned, the name of Carney.

Q State whether or not you made any examination of the toilet known as toilet No. One next to the window? A I made as perfect an examination--

Q At that time, I mean? A At that time, as I could, without going into details.

THE COURT: Strike that out. Now, your answer to that question, sir, is "Yes" or "No".

THE WITNESS: I did, without measurements.

CASE #1508

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At the end.

Q Now, I don't know if you know that the window
through which the bullet shot in through the glass
was not the right one, as he told us, was completely
blown, but the one next to that illustration I can give
you, that is the one that was shot in over the
times, and it was a little bit of a hole, -- a pinhead,
I suppose, and the other one was a little bit of a hole and
the other one was a little bit of a hole, twelve or fifteen
feet from the back.

Q One agent. Did you at that time point --

107. *Method used:* - I hope so.

THE COURT: Now, I don't have this witness here. You may ask the witness, and the witness will pay attention. You say that you saw him, that was-- that happened when you were in that room with him, what you said to him and what he said to you. Now, you go ahead and tell us.

MR. TALLMUTH: If your Honor please, I don't understand that to be the rule of law at all.

"THE COURT" Very Well. Withdrawn.

MR. TALLAMBO: "They" asked Mr. Dunn if he pointed to the window to this witness and told this witness--

THE COURT: It is within your right to ask him that question.

1508

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Q. Did Dunnpoint to the window, I mean the lower window overlooking the toilet, and tell you that he saw this act ~~in~~ looking through that window?

MR. MCCORMICK: Objected to as leading.

THE COURT: Objection overruled. A leading question is not in itself inadmissible.

Q. He pointed it out specifically.

Q. Pointed to what window? The window or pane of glass next to the toilet booth which overlaps the toilet booth. The other one overlapped the toilet room.

Q. Did Captain Dunn point out to you a place where the coat hung? A. Yes, sir, Captain Dunn explained--

Q. One minute, I mean the coat of your son that was hanging on the rail? A. Yes, sir.

Q. Did he say to you that that coat overhung the toilet box, and the face of any one in that locality, so that you could not see it? A. He did.

Q. What was the exact language he used, or the substance of it? A. He says, "We have got to resort to these things to catch these people, because"-- And he opened the door-- he said, "You see that hook; you see that paper receptacle?" He says, "They come in here and hang their coats on that hook. The coat, however short, reaches to the paper receptacle, which is some four inches in width itself," and he says, "When you open the door and hold it wide open, if a man did not get up you could not tell what he is doing, because

ASE #1508

it is a complete screen in front of this hole". That was the explanation he made, and how he came to make it.

Q As I understand, that was on Friday afternoon, about what time? A That was about, I should judge, about forty-- five forty.

BY THE COURT:

Q Pardon me one moment. You say that you looked at a certain window? "Yes" or "No". A Yes, sir.

Q That window divided into how many panes? A Four.

Q There was light in any many of those panes? A Every one of them, sir.

BY THE COURT:

Q That is a window? A Oh, Friday, yes, sir.

Q The night of the murder, Friday evening?

Q Was there any one in that toilet room then except yourself and yourself? A No, sir; that is no one that I knew; no one ~~xxxx~~ ~~xxxx~~ out of sight is there.

Q When you called your attention to that hole in the ceiling, what did you do in regard to looking at it? A I went in the room and looked up to see the position of that hole, and where it was located.

Q How long did you remain there examining the premises?

A Only a short time.

Q Was there one or two holes at that time in that ceiling? A One hole.

Q What kind of a hole was it, and was it marked in any

CASE 1508

way? A Yes, sir, there was a splinter which at that time was hanging from the ceiling.

Q Is that the only hole in the ceiling over No. One and Two? A That is the only hole that was there.

Q Take this piece of timber that I hand you, and point out to the jury-- People's Exhibit No. 3-- point out to the jury which hole was there at the time you speak of? A This hole, and this is the splinter that hung from the ceiling (indicating).

Q When was the next time you went back there? A On that night--

MR. MCCORMICK: Now answer, can't you?

THE COURT: He is trying to now.

A (Continuing) I can't answer in any other way. On that night, but on the morning of the 26th--

MR. MCCORMICK: I move to strike that out as not responsive.

Motion denied.

A (Continuing) On the morning of the 26th, at half past one in the morning.

Q That would be Sunday morning? A No, that was Saturday morning.

THE COURT: He has told you the time, now, Colonel. You asked him when.

Q You went back at that time? A Yes, sir.

Q Who went with you? A A man by the name of William

CASE # 1508

Keates.

Q Was he an acquaintance of yours? A No, sir.

Q Where did you become acquainted with him?

MR. MCCORMICK: He said he was not an acquaintance.

A When I went to Mr. Muller's home, to investigate this case Mr. Keates case in, was a neighbor.

Q You met him at that place? A Yes, sir.

Q Then he was with you?

MR. MCCORMICK: I object to the leading question.

THE COURT: I will allow it. It is a mere summary of what the witness testified to.

Q He was with you on Saturday morning, at half past one o'clock? A On Saturday morning at half past one o'clock.

Q What did you do when you went to this toilet on Sunday morning at half past one o'clock? A I thoroughly examined the toilet.

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

THE COURT: Strike it out, and the jury will disregard it.

Q That is a conclusion, Mr. Weikly. Did you make an examination of the toilet? A I did, sir.

Q Did you see that ~~xxxxx~~ hole there at that time? A I did, sir.

Q Was there one hole or two, there at that time? A One hole, sir.

CASE # 1508

Q Did Mr. Keates make an examination of the holes there with you? A Yes, sir.

Q Did you examine the window at that time? A I did, sir

Q Did you take any measurements there at that time?

A I did, sir.

MR. McJORMICK: Objected to. Let him tell what he did. The man will say yes to everything that is asked him.

MR. TALIAFERRO: If your Honor please, it is important for me to examine the architect. I am out of my order--

THE COURT: I will allow you to suspend with this witness and put on the architect.

CHARLES D. BERNSTEIN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your full name? A Charles D. Bernstein.

Q Where do you live? A 46 West 119th Street.

Q How old are you, Mr. Bernstein? A 26.

Q What kind of business are you in? A Architecture.

Q How long have you been an architect? A Well, I spent

five years as an architect. How long have you been an architect?
A Five years.

CASE # 1508

Q. Five years? A. Five years.

Q. And what experience have you had as an architect?

A. Well, five years theoretical experience at college.

Q. And what experience have you had in making maps and diagrams of premises and houses?

THE COURT: I take it the People will concede this witness is qualified to draw a diagram?

MR. McCORMICK: I concede that.

Q. Did you draw this diagram that I hand you (handing paper to witness)? A. Yes, sir, I did.

Q. Is that a correct diagram? When did you draw it?

A. I don't remember the exact date, but about a month and a half ago or a month ago.

Q. Was that a correct diagram of the toilet room and the smoking room of the Pennsylvania Railroad at Cortlandt Street? A. Well, it was a correct diagram as far as the stalls were concerned, but the diagram of the waiting room is only approximate.

Q. What is that? A. The diagram of the waiting room is only approximate.

Q. But is it a correct diagram of the toilet room?

A. Yes, sir.

Q. And of the stalls in the toilet room? A. Yes, sir.

Q. And of the waiting room? A. Yes, sir.

Q. And of the stalls in the waiting room? A. Yes, sir.

Q. And of the stalls in the waiting room? A. Yes, sir.

CASE # 1508

the waiting room? A Yes, sir.

MR. TALIAFERRO: I offer it in evidence.

THE COURT: You had better mark it for identification, first.

(Paper last referred to is marked Defendant's Exhibit D for identification, of this date.)

MR. McCOBICK: I object to the introduction of this diagram because there are on it--

THE COURT: It has not been offered.

MR. TALIAFERRO: I offer it in evidence.

MR. McCOBICK: I object to it upon the ground that there are lines on here showing other things than the building.

THE COURT: The objection appears to be well taken, Col. Taliaferro, as the evidence now stands. You may interrogate this witness only respecting the matters, as to which no testimony has been given.

Q I call your attention first, Mr. Witness, to the fact that the waiting room is not shown on this diagram that I hand you. Understand? A Yes, sir.

Q The paper which you hold in your hand is a correct diagram of the toilet room isn't it? A Yes, sir.

Q And the waiting room is not shown? A Not shown on this diagram.

Q Did you reduce it to a scale? A Yes, sir, one half inch to ten feet.

8091
CASE # 1508

Q One half inch to the foot? A To the foot.

Q And is that scale a proper one of all of the proportions as shown by this diagram? A ~~This is~~ Yes, sir, the proportion is well carried out.

MR. TALIAFERRO: I offer it in evidence.

THE COURT: The difficulty is there are certain things upon that paper which are additional to what might be called a mere diagram. If they were not upon it, I would receive the paper in evidence.

MR. TALIAFERRO: What is it, if your Honor please?

THE COURT: Well, among other things there is a line purporting to be a line of vision.

MR. TALIAFERRO: I will ask him as to that.

Q Did you go there to examine the premises in order to make the diagram? A I did.

Q Did you find in the ceiling over booth No. One and Two, I mean No. 1 nearest the window, and No. Two adjoining it, two holes in the ceiling? A I did.

Q Were those two holes in the ceiling at the time you made this diagram, or made the measurements for making the diagram? A Yes, sir.

Q Examine this piece of timber which I hand you, People's Exhibit 4, and state if in your judgment those are the same two holes? A They looked very much like the two holes I saw there. I guess they are.

Q What was the position in the ceiling of those two

CASE # 1508

holes? A One hole was directly over the partition separating the stalls. One and two and one was over booth Two, stall Two.

Q (By the court) That is to say, if an object-- a plumb line had been dropped directly through one of the holes, what would it have struck? A The top of the partition separating the two stalls.

Q We can't hear you. A If a plumb line were dropped from hole No. 1, it would strike the top of the partition separating both stalls.

BY THE COURT:

Q Would that be so with respect to a plumb line dropped from the centre of that hole? A Yes, sir.

Q Suppose you had dropped a plumb line directly at the central point of the hole that you are now referring what to, would that line have touched, if anything? A It would have ^{ed} ~~not touch~~ the top of the partition separating both stalls.

THE SECOND JUROR: I can't hear a word the witness says.

THE WITNESS: This plumb line would strike the top of the partition, separating the two walls.

Q How wide, if you know, was the top of that partition? A Very close to two inches; about an inch and seven eighths; to be more accurate, 1 inch and $7/8$.

Q Did you measure it? A Yes, sir.

CASE # 1508

Q You speak of the hole that was over the partition between No. 1 and No. 2.

Q What distance was the other hole from this hole that you speak of? A Well, from centre to centre it was about 4 1/2 inches.

Q And the second hole was over Booth No. 2, then, was it?

A Yes, sir.

BY THE COURT:

Q That is to say a plumb line dropped through the second hole would have touched the floor of booth No. 2; is that so?

A Yes, sir, it would hit inside of Booth No. Two.

Q It would be inside of booth No. Two? A Yes, sir.

BY MR. TALIAFERRO:

Q The Court has asked you whether an object dropped from the centre of hole No. One, and when I say hole No. One I mean the one nearest the window, would fall immediately upon the partition between Booth No. One and No. Two, did you?

A (No answer).

BY THE COURT:

Q There is one other thing I want to get. Mr. Bernstein, are you able to tell us the distance between the top of that partition and the ceiling of the booths? A The top of the ceiling and the partition over the booth?

Q How far below the ceiling of the booth was the top of the partition between the booths? A 5 feet 7 inches.

CASE # 1508

BY MR. TALIAFERRO:

Q Did you make a test at that time, to see what would be the line of vision from hole No. Two across the top of the partition between One and Two into booth No. One? A I did.

Q You did? A Yes, sir.

Q Is that point of vision correctly drawn on that map?

A Yes, sir, within a fraction of an inch.

BY THE COURT:

Q Have you looked down through the hole that you say was over the partition between the two booths, was there any portion of the floor inside of booth One that was not visible? A Yes, sir, the portion of the floor adjoining the partition was not visible through hole No. Two.

Q If you looked down through the hole, a plumb line from which you say would have touched the partition between booths One and Two, was there any portion of the floor of booth One that was not visible? Now, yes or no. If you don't understand the question say so? A Yes, sir, I understand it perfectly. There was a portion of the floor that was not visible.

Q What part? A A small portion adjoining the partition between the two walls.

MR. McCORMICK: I move to strike that out; "a small part" means absolutely nothing.

THE COURT: Strike it out.

CASE # 1508

Q A part adjoining the partition between booths One and two, is that so? A Yes, sir; was not visible.

Q Now, measuring at a right angle from that partition out into the floor of Booth One, how many inches would you have to go before you came to any point on that floor visible to a person looking through the hole that you say was over the partition? A Well, I didn't make any drawings covering that experiment because I only drew a line of vision from where No. Two -- hole No. Two, but for my own benefit I drew a line from hole No. One, and I find a little fraction of the floor that was not visible from Hole No. One.

Q Are you able to say how far, if at all, from the side of the partition between booths One and Two on the side of booth One an object would have to be in order to be visible by a person looking through the hole which you say was over the partition between those booths? A Well, I could not--

Q Do you understand the question? A I understand perfectly. I could not say offhand, I have a drawing here which would very well bring out just what may be seen through Hole No. One.

Q You will have to talk so you can be heard? A I say I have a drawing here, a large full sized drawings, that would very well explain all this.

Q Did you make any experiment with any physical object for the purpose, by means of such experiment, of determining what distance, if any, an object would have to be on the in-

CASE # 1508

side of partition No. One at the elevation of the hole in that partition in order to be visible by a person looking through the hole that you say was over the partition? A I didn't make any complete experiments.

Q How high from the floor of the booth is the bottom of the hole between, say in the partition between Booths One and two? A Well, the hole was covered by a bit of tin when I took my measurements; so I could not very well locate the hole accurately.

Q Was it covered on both sides? A Yes, sir.

Q What was the size of the piece of tin? A I don't remember exactly.

Q About? A About six or eight inches square.

Q A little louder; the jury want to hear you? A Between six and eight inches square, I imagine.

Q How far was it from the bottom of that piece of tin to the floor of Booth No. One? A I did not take that measurement.

MR. TALLIAPHERO: Now, will your Honor ask him what the point of vision from hole No. Two the floor of hole No. One was?

THE COURT: I may have it wrong, Colonel, but I understand this defendant is said to have been in the booth that is known as No. One?

MR. TALLIAPHERO: Yes, sir.

THE COURT: Muller is said to have been in the booth

CASE #1508

known as booth No. Two.

MR. TALLAFERRO: That is right.

THE COURT: And there is said to have been a hole in the partition between One and Two. This witness has given testimony respecting certain holes in the ceiling, one of which, he says, was over the top of that partition. What I want to find out from this witness, if he is in a position to testify on that point, is how far an object, would have to protrude on the inside of booth One at the level of the hole between One and Two, in order to be visible to a person looking through the holes said to be over the partition.

MR. TALLAFERRO: That is right.

THE COURT: Now, if this witness is able to testify to that, I would be glad to hear him.

MR. TALLAFERRO: Will your answer ask him--I make no point as to that. Will your Honor ask him as to the point of vision from where No. Two crossed the top of the partition into booth No. One?

THE COURT: I understand him to say that a plumb line drawn through a certain hole would strike the top of the partition between One and Two, and I understand him to say that, as a result, there is a certain portion of booth No. One which would not be visible to a person looking through that hole.

CASE # 1508

MR. TAGLIABUONO: That is right.

THE COURT: And that that portion was the portion nearest to the partition between One and Two. Now, if this witness is able to testify how far an object would have to protrude through that hole from Two into One, at the level of the ceiling, as to the hole in the partition,-- in order to be visible to a person looking through that hole,-- yes, I would receive the testimony.

MR. TAGLIABUONO: I understand the witness to say he did not see the instruments as to that.

THE COURT: Very well.

MR. TAGLIABUONO: But I suggest to your Honor that he be asked as to the point of vision from Hole No. Two which goes over into No. One. We have made a measurement as to that? This witness--

THE COURT: You interrogate him.

BY THE COURT: Now--

Q Those partitions were the top of those partitions covered with a strip, or with capping? A It appeared to be capping..

Q How much? A 1 inch and 7/8.

Q Any molding besides that capping? A 1 7/8. That is all that would be in the way of vision.

Q How are the partitions secured? Any joints? A 7/8 inch boarding, which acts as the partition.

Q No joints on top? A No, sir; absolutely clear on top.

CASE #1508

Q You say an inch and 7/8? A Across the top of the partition, the capping.

BY MR. TALLAMERRO:

Q I repeat the question I asked you a while ago. Did you have a line of vision from Hole No. Two?

A Yes, sir.

Q What is the hole over Booth No. Two? A Yes, sir.

Q Now, the top of the partition between No. One and

Booth No. One? A I didn't carry it down to

the floor; that carried it very close to the floor; that

full sized opening I've here will readily explain--

THE COURT: You are talking about the hole that you

are talking about over Booth Two? A Yes.

Q And you are talking about what part of it, or rather what

portion of it, the top of Booth One, or what portion

of it, that line of vision through that hole, is that

right?

A Yes, sir. That is right.

Q Now, if you were standing at the far end of a line of

vision from Hole No. One across the top of the partition

between Booth No. One and Two strike the object directly from

where the hole was in the partition between those two booths?

A I didn't get that right. Are you referring to Hole No.

Two now?

Q Yes.

THE COURT: You said No. One.

CASE # 1508

MR. TALLIEMERRO: No. Two, I mean.

(Witness read by stenographer, as follows: "Now, having seen that test, how far would you go from the door to the window?")

Witness: I would go from the door to the window.

Q Now, how far from the door to the window?

Witness: I would go from the door to the window.

Q Now, how far from the door to the window?

Witness: I would go from the door to the window.

Q Now, how far from the door to the window?

Witness: I would go from the door to the window.

Q Now, how far from the door to the window?

Witness: I would go from the door to the window.

Q Now, how far from the door to the window, which is marked No. 1 and No. 2, there is a line drawn from the door to the window, and the partition into two rooms, is that a correct line of vision, according to your recollection? It is approximate, but I have a correct line drawn on some other drawing which is in the court room I think.

Q This is approximate? A Yes, sir, this is approximate.

Q The rest of this diagram is correct, according to

your measurements? A Yes, sir.

MR. TALLIEMERRO: I offer it in evidence.

MR. McCORMACK: I object to the admission of this

CASE # 1508

dia ram, because the witness admits that it is not correct, accurate.

THE COURT: The witness has said that a certain line is approximately right. I think I will admit the diagram calling the jury that that line is not to be regarded as being in any error.

THE DEFENDANT: I now want that your honor permit me to ask the court to order that the jury be instructed that the court should not be a court of perfection, and if it is not a court of perfection, it is a court of common sense, and if it is a court of common sense, it is a court of justice, and if it is a court of justice, it is a court of law.

THE COURT: I will hear you, defendant.

THE DEFENDANT: To your honor, please, my learned

counsel has asked the court to order that the jury be instructed--

THE COURT: A little further, please, my learned

counsel. THE DEFENDANT: The defendant has been so ~~xxx~~ fair

and honest, that I don't intend

the propriety was potential, but such a motion

should not have been made in the presence of the jury.

In the first place, the premises are not the same now

as they were at the time that this accident took place

and such a motion as that places the defendant's counsel

in a very awkward situation. Now, I will say this--

THE COURT: I will decide the motion in view of the fact that there is a conflict in the testimony as to

CASE # 1508

whether or not there were two holes on the day in question. The motion is denied by the Court.

MR. TALIAFERRO: I want to say one other thing. I may consent to that motion, when the case is ended, but certainly not now. The proper time to have made the motion--

THE COURT: I will deny the motion, in view of the fact that it is a controverted issue in this case whether the premises are now in the condition they were on the 24th of August, whether on the 24th of August there were two holes?

MR. TALIAFERRO: May I ask your Honor to say further to the jury that your Honor denies it of your own motion?

THE COURT: Yes, I deny it of my own motion, entirely uninfluenced by what is said by counsel for the defendant and I tell you now, each one of you, that when you retire to deliberate, if this case should be left to you, the fact that that motion was made is not to be a subject of consideration by any one of you, and, of course, that makes not the subject of discussion, or discussion, or thought of.

Q Now, Mr. Taliaferro, did you measure the thickness of the distance between the lower part of the ceiling and the floor above? A Well, I don't know exactly but--

Q And near the thickness of the floor of the ceiling?

A About four feet four.

CASE # 1508

Q Which? A About one foot four from the floor to the finished ceiling.

Q I can't understand what you say? A About one foot four from the floor to the finished ceiling.

Q One foot four inches? A About that.

Q Do you know what the thickness of the concrete on top was? A Yes, about two and one eighth inches.

Q 2 1/8 inches? A Yes, sir.

Q And the concrete together with the ceiling, is in all about 1 foot 4 inches? A Yes, sir.

Q Weren't there cross beams in that ceiling in the floor above? A Yes, sir, there was joists supporting the ceiling.

Q You call them joists? A Yes, sir.

Q In what direction were they running? A perpendicular to the windows, that is the wall in which this window was.

Q They were running at right angles with the window next to the beam? A Yes, sir.

Q To the Hudson River? A Yes, sir.

Q About how far apart-- how far apart were they? A Well, I don't know that because they were quite a distance from the wall.

Q Now, sir, give me, if you can, your best judgment, how far apart were they?

Q Now, sir, how is that material, concrete?

Q Now, sir, I want to show, if you please,

CASE #1508

pleases they could not have been ~~exceeding~~ exceeding twelve inches. That the hole in the floor above could not have been more than twelve inches.

MR. MCGORMICK: Twelve inches what?

MR. TALLIAFERRO: Across. I will prove that by another witness.

THE COURT: Very well.

Q Now, between these two joists, as you call them, was there a cross piece or a support? A Yes, sir, there was.

Q What was the size of that cross piece, or support?

A It was made of two pieces, one piece 4 by 2, and the other 7/8 by 4.

Q How far was that crosspiece from hole No. One? A It was very close to being directly over it.

Q Which? A It was very close to being directly over it.

THE COURT: You don't mean that there was any part of that joist that was under hole No. One?

MR. TALLIAFERRO: Oh, yes.

THE COURT: You don't mean that there was any part of the cross piece that was under hole No. One?

MR. TALLIAFERRO: Over.

THE COURT: Over hole No. One?

MR. TALLIAFERRO: I don't think there was anything over, but I am just telling you what I saw here, which shows

Q. Now:

THE COURT: "I don't think there was anything over" A No den

CASE # 1508

Q How was the ceiling secured to the beams? Were there strips on the beams? A Strips on the beams.

Q Were there any cross pieces? A I noticed one bit of wood there, tacked on to those beams, those joists I referred to.

Q How wide were those beams, apart? A You mean the little
ridgix strips?

Q No, the beams, how wide apart are they? A I don't know; I didn't measure them. About eighteen inches, I guess.

Q Did you say the ceiling was nailed on the beams?

A Yes, sir.

Q The strips running on the beams across? A They were running at right angles to the beams.

Q The strips were nailed on the beams? A At right angles to the beams.

Q And nailed in the grooving, into the beams? A Yes, sir.

Q Then there is no cross obstruction? A No, sir.

R. TALIAFERRO: I have here a diagram of the exact plan of the premises.

THE COURT: If you can establish it by some other evidence, this witness apparently is not informed on that

R. TALIAFERRO: I have here a full sized drawing

CASE # 1508

MR. McCORMICK: It is not in evidence.

THE COURT: That is not in evidence, counselor.

I think the best thing you can do is to roll it up.

BY MR. TALLAFERRO:

Q I wish you would examine a map diagram which I now show you. State whether that is a correct diagram or map of that part of the toilet room of the Pennsylvania Depot, or Pennsylvania station at Cortlandt Street, of the partition between One and Two, and of toilet No. One? A Yes, that is a correct map.

MR. McCORMICK: I object to that question. He can't tell by looking at it there whether it is correct or not.

THE COURT: The witness assumes to testify? Did you draw that yourself?

THE WITNESS: Yes, sir, I drew that myself.

Q And did you draw it by actual measurements? A Yes, sir.

Q And actual measurements right on the premises.

Q Is this approximately exactly the size of the toilet?

A Yes, sir, that is the size, full size.

THE COURT:

Is that as close as the real thing is? A Yes, sir.

THE COURT: It is marked for identification.

MR. Tallafarro: I offer it in evidence.

MR. McCORMICK: I object to its being marked in evi-

THE COURT: It has been properly proven to be a correct

CASE 1508

THE COURT: You have the testimony of this witness to the effect that he drew it.

MR. MCCORMICK: I will cross examine the witness, if your Honor please.

THE COURT: Yes, I will allow you to do that.

PRELIMINARY CROSS EXAMINATION BY MR. MCCORMICK:

Q When you went down to make these measurements, were there two holes in the ceiling or not? A Yes, sir, there were two holes.

Q I now show you this exhibit and ask you whether these were the two holes (handing witness People's Exhibit No.

3). A That ~~xxxxxxx~~ looks like the two holes I saw there.

Q You don't know whether they were? A It looks like it.

Q Do you know? "No" or "Yes".

THE COURT: He can't say.

MR. MCCORMICK: Then I submit that as this map deals with lines, ~~xxxxxx~~ drawn from those holes down into booth One and there is absolutely nothing to show that the two holes were the holes that were there on the day this crime was committed, that it is inadmissible.

THE COURT: Objection overruled.

MR. MCCORMICK: He went up there and bore two holes.

THE COURT:

Q You don't know whether he went up there?

CASE # 1508

A No, sir.

Q You found two holes there? A Yes, sir, I found two holes.

MR. McCORMICK: How long ago?

THE COURT: You have established, by other testimony, that the conditions are the same except in certain respects.

MR. McCORMICK: Yes; these holes were sawed out some time ago.

BY MR. McCORMICK:

Q I want to ask you whether any part had been sawed out from the ceiling of that room? A Yes, sir.

Q What was the date on which you made these measurements? A I made a number of measurements; I don't know the exact date.

Q What was the first date? A About five or six weeks ago.

Q How many times have you been down there making measurements? A Half a dozen times.

BY THE COURT:

Q Had any part been sawed out at the time you first went there? A No, there were only two holes there.

Q At the time you first went there, were those two holes in the ceiling? A Yes, sir; there were two holes in the ceiling.

MR. McCORMICK: That is not an answer to your Honor's

CASE #1508

question as I heard it.

THE WITNESS: I am not sure those are the two holes, although they look very much like the two holes I saw.

THE COURT: I will tell you what I will do. There is a slight technical difficulty, but the evidence is not going to be excluded if that difficulty can be explained and done away with, which I will see is done during the progress of this trial, in the interests of justice. Now, we will get some evidence here, as to the precise day when that piece of wood that you have there was cut out and this examination can be suspended until that time. If it transpires then that this witness was there after that piece of wood was cut out, the evidence will be excluded in so far as it may bear upon observations or measurements made by him through two holes. If it transpires that he was there before, the evidence will be allowed to stand.

MR. TALIAFERRO: Will your Honor allow me to ask him one or two other questions?

BY MR. TALIAFERRO:

Q Mr. Bernstein, when you made this map, and those other maps, were there two holes in that ceiling over No. 1 and 2?

A Yes, Sir.

Q What was the size of those two holes? A Well, the diameter of each hole was about an inch and a half.

CASE # 1508

THE COURT: I think I will interrupt you for a moment. There is evidence in this case, introduced by the people, as to the date when the holes were cut.

MR. MCCORMICK: I am trying to find that now.

MR. TALIAFERRO: This witness swears positively those two holes were in the ceiling.

BY THE COURT:

Q What was the day when you went there first? A I don't remember the exact date.

Q Well, what was the month when you went there first?

A It was in February.

THE COURT: Is there any testimony in this case fixing the date?

MR. MCCORMICK: Will you look at the testimony, Mr. Stenographer, of Captain Dunn?

MR. TALIAFERRO: This witness went there and made these measurements from two holes in that ceiling. That ceiling was then intact.

THE COURT: I want you to elicit from the witness that the ceiling was intact save for the two holes.

MR. MCCORMICK: He has already testified, your Honor, that it was not, that they had been sawed out.

BY MR. TALIAFERRO:

Q When you made these maps were there any other holes in that ceiling that would correspond with that block of timber?

A There was no hole to correspond with that block of timber.

CASE # 1508

Q Had any such place as that been sawed out of that ceiling? A Yes, sir, the two holes was sawed out.

BY THE COURT:

Q But was there a square sawed out at the time you first went there and looked? A Yes, sir.

Q In other words the only thing that had been sawed out of the ceiling at the time you first looked were two holes?

A Yes, sir.

Q And your best recollection is that the two holes that were sawed out were holes about the size and their relative position of the two appearing in this block of wood? A Yes, sir.

THE COURT: I will allow him to testify.

MR. TALIAFERRO: Then I offer this map in evidence.

MR. McGOULICK: I object to it.

THE COURT: If you want to examine him further on it, you can, but, otherwise, I will receive it.

BY MR. McGOULICK:

Q Do you mean to say that when you made the measurements that no part of that ceiling had been cut with a saw?

THE COURT: Other than the two holes? ~~xxxxxxx~~

A No, sir, not over booths One and Two.

Q That is, the ceiling was all intact except there were two holes in it? A Yes, sir.

MR. McGOULICK: I object to the admission of the

map.

CASE # 1508

THE COURT: Objection overruled.

MR. TALIAFERRO: I offer this in evidence.

THE COURT: Received.

BY MR. McCORMICK:

Q How long ago was the first time you went to that toilet?

A It was in February; I don't remember the exact date.

Q About what date? A It was on a Saturday afternoon.

I should think the counsel for the defence remembers it.

Q Did you drop a plumb line through Hole No. One? A No, sir; I was not upstairs that day.

Q Oh, you never went upstairs? A I was upstairs later on

Q Give me the date that you dropped a plumb line through hole No. One? A I didn't drop any plumb line through hole No. One.

Q How do you know where a plumb line dropped through would land? A I located the holes accurately relative to the walls, and I also located the partition with relation to this wall.

THE COURT: You may go into that on your cross examination.

MR. McCORMICK: I object to the reception of this in evidence.

THE COURT: I will receive it.

(Map received in evidence and marked defendant's Exhibit B of this date.)

CASE # 1508

BY MR. TALIAFERRO:

Q Now, Mr. Bernstein, I was asking you about a cross piece between the two beams.

BY THE COURT:

Q Is that a sectional view? A Yes, sir, a sectional view.

Q In other words that purports to be the appearance that it would present to a person standing on the floor of the toilet? A Yes, sir, looking toward the window.

BY MR. TALIAFERRO:

Q Mr. Bernstein, I was asking you while ago about those two cross pieces between the two beams. You say one of them was 3 by 4 inches? A 3 by 4.

Q How far did that cross beam extend down, about how far from the ceiling, from the lower part of that cross beam? A Which cross beam are you referring to?

Q The one 3 by 4 inches. A That was up near the ceiling.

Q Which? A That was up near the floor.

Q How far was it from the ceiling? A About nine inches.

Q About nine inches? A Yes, sir.

BY THE COURT:

Q You mean it extended down from the top surface of the concrete to within nine inches of the bottom surface of the wooden grilling of the toilet? A The cross piece was

CASE # 1508

9 inches from the ceiling.

Q. You mean it was nine inches above the level of the lower surface of the wood forming the ceiling of the toilet?

A. Yes, sir, the upper surface of the wood forming the ceiling.

Q It was then located above the level of the upper air-
mass? A Yes, it was above the level of the upper air-

As I said, I have no experience with the time vision
of the future. I am sure, however, that it is well, not
justly, called "the future." It is the future, as we
have seen, which is the one thing that is certain.

...that we are not looking at this diagram just as they are

Q Now, the two holes that are marked there oppo-
site from the two that have been designated in the testi-
mony. In other words, in the diagram, the hole that is num-
bered One. Is the hole that has been spoken of here as Hole No
two; is that so?

THE OFFICE, York, 6th.

Q Now, far would that cross piece 3 by 4 inches go to the line of vision looking directly down through Hole No. Two on this diagram? A The inside line of this cross piece just about lines up with one of these with the circumference of Hole No. Two.

Q In other words, it is flush with the side of the hole that is marked on the diagram as hole No. Two? A Yes, sir.

Q Which is the hole that has been spoken of as the hole over the top of the partition between booths One and Two? A Yes, sir.

THE WITNESS:

Q Does it show the exact distance from the place where the hole in the wall is located for the hanging of coats?

A Yes, sir, it shows the exact distance from the floor.

Q And does it show the location, sir, of the toilet?

A Yes, sir, it shows the location of the toilet.

Q Does it show the exact width of the toilet? A Yes, sir.

Q This is the exact width? A Yes, sir.

Q And does it show the exact location of the window?

A Yes, sir.

THE COURT: With respect to the height from the floor?

THE WITNESS: Yes, sir.

Q And the exact location of the hole? A Yes, sir.

Q In the partition between No. One and No. Two? A No, sir, it does not show the hole because I could not locate that hole accurately.

BY THE COURT:

Q That is the piece, that is the wider piece at the top? A There are two parallel lines--

ASE 1508

Q You have a piece of paper there that appears to be glued on or pasted on the larger piece? A Yes, sir.

Q Now, the bottom of that piece of paper indicates the level of the sill of the window; is that so? A Yes, sir.

BY THE COURT, PLEASE:

Q Now I ask when this diagram was made? A This was made last week.

Q What kind of hole was in the ceiling when this diagram was made? A There was a square opening.

BY THE COURT, PLEASE:

Q When you had inspection, or visited those premises for the purpose of taking measurements to make these drawings, did you also go to the room upstairs above the toilets, what they called a suspended toilet? A I did not go up there the first time, but I went up there last week. I was up there last week, when I made that drawing, just previous to making that drawing.

Q Did you take the measurements of the thickness of the ceiling above? A Yes, sir.

Q Did the holes upstairs correspond with those two holes? A There is two holes there now. There is a hole up above, in the concrete, close to a foot square, cut out of the concrete, and there is a hole in the ceiling.

Q Do those two holes correspond with those two holes? (Indicating People's Exhibit No. 3?) A You mean the two round holes?

CASE # 1508

Q In the room above the toilets, in the floor you looked down, were there two holes that corresponded with those two holes (referring to People's Exhibit 3)? A There are no two holes there now. No, they don't correspond; just a square hole.

Q In other words, at the time you made that drawing, there was a square piece cut out of the wooden ceiling? A Yes, sir.

Q But at the time that you first looked, there was no square piece cut out of the wooden ceiling, but there were two round holes in the ceiling? A Yes, sir.

THE COURT: Is that plain?

THE FOREMAN OF THE JURY: I want in the room above, didn't they look through.

THE COURT: It is a square hole.

THE FOREMAN OF THE JURY: There were no two holes corresponding with those?

THE COURT: There is no claim in this case that there was more than one hole cut in the concrete, as I understand it. But the hole in the concrete was large enough to extend over the surface of two holes cut in the wooden ceiling.

THE FOREMAN OF THE JURY: I want to find out ~~whether~~ why there should have been two holes necessary to look through, when one hole was sufficient to look through, to know what is going on below.

8051
#1508
CASE

THE COURT: There were two round holes, according to the contention of the People, made in the wooden ceiling of the toilets, and one large opening in the concrete above that ceiling, according to the contention of the people, large enough to cover the surface occupied by those two holes. The contention of the defence, as I understand it, is that there was originally but one hole in the wooden ceiling.

THE FOREMAN OF THE JURY: Thank you, your Honor.

BY MR. MCCORMICK:

Q At the time you made that map, there were not two round holes in the ceiling were there? A (No answer)

Q How did you arrive at the distance between the those two holes that you have drawn on that map? A By measuring them when I first went on the premises.

Q How long before? A In the middle of February; I don't know the exact date.

Q How did you find out just in what part of the opening cut out, made by the square piece of wood that had been cut out, those holes were? A Of course, I located them accurately on the original figure, and also located them on that drawing.

Q How could you locate them before you knew where the wood was going to be cut? A I knew where they were located in the ceiling.

CASE # 1508

Q How did you find that out ? A I knew how far it was from the wall, right behind the toilets; I knew how far it was behind the wall in which that window was constructed, which would fix those holes accurately.

BY THE ELEVENTH JUROR:

Q What is the measurement of that toilet bowl? A About 15 inches.

Q How high is that? 15 inches? A I can put a scale to it and get the exact figures.

Q How long is that flush pipe from the tank through the toilet bowl? A About six feet; that is the exact height.

Q Is that the exact height of the toilet bowl? 15 inches? A Exact height, within half an inch of the exact height.

Q Was there any chain to that? A There was, on the left side.

Q There was a chain? A There was a chain.

Q It is not an automatic flush bowl? There is a chain?

A Yes, sir.

Q How far did that chain come down? A Within three feet six inches of the floor. I did not take the measurement of that.

BY THE ELEVENTH JUROR:

Q I want to know, if the holes were not there at the time the window was made, how you determined the

CASE # 1508

line of vision as indicated on the diagram? A The holes were not there when I made that diagram, but they were there when I took my first measurements. I located the holes, when I took my first measurements, about six weeks ago, and when I came to make the measurements for the drawings, I found there was a square hole taken out.

Q The line of vision is simply indicated from memory?

A Not from memory; located accurately. And after I located them, the hole was cut out.

BY MR. TALIAFERRO:

Q In other words, you took this diagram which has been marked in evidence.

MR. MCCORMICK: I am cross examining, excuse me.

BY MR. MCCORMICK:

Q When you went there the first time you saw two holes?

A Yes, sir.

Q Did you look down through each hole? A No, sir.

Q You did not? A No, sir.

Q Then you don't know what you could see, or that you could see all of the floor of booth One from hole No.

A Yes, I do know.

Q How did you know? A By locating them in the ceiling,

and then making the measurements.

BY MR. TALIAFERRO:

Q When you first got there, seeing that

the ceiling was in the ceiling, you made certain meas-

8051 1508
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measurements to determine where those holes were with respect to the sides of the room? A Yes, sir.

Q I understand that you made a certain measurement, starting with the window, and you made a certain measurement starting with the wall; that was the rear wall of the toilet?

A Yes, sir.

Q And at the point where those two measurements came together was the point of the centre of the first hole, namely, the hole nearest the window; is that so? A Yes, sir.

BY MR. MCCORMICK:

Q What was the shortest straight line between those two holes in length? A Between the two holes? Between the centres?

Q (Question read by stenographer as follows: "What was the shortest straight line between those two holes, in length?")

THE COURT: That is, between the circumference of one and the circumference of the other, where they were nearest together, or how wide was the wooden piece between them?

THE WITNESS: About 3 1/2 inches.

Q Did you measure it? I don't want "about"? A Yes, I measured it.

Q Where is the measurement? A It is up on the scale now. will tell

Q Can you remember it now? A Yes, I ~~will~~ tell you

Q (Question read by stenographer as follows: "What was the measurement?") About three inches.

CASE 1508

Q You just refreshed your recollection, didn't you? A I did.

Q You looked at something? A I did.

Q And was your memorandum there about three inches?

A No, sir; it was marked three inches.

Q I want to know exactly. You are making a diagram here. The difference of the slightest fraction of an inch might result in a very wrong estimate as to the line of vision.

BY THE COURT:

Q Are you prepared to state that that distance was three inches? Now, that is plain? A It was very close to three inches; within a fraction of an inch.

Q Are you prepared to say it was not at least three inches and a half? A Well, it was between 3 inches and 3 inches and a half.

Q Are you prepared to say it was between three inches and three inches and a half? A Yes, sir.

MR. McCORMACK: It happens to be 3 inches less than three inches.

MR. PADDINGTON: That is to say from 3 inches to 3 inches and a half.

THE COURT: He says he is prepared to say it was e-

CASE 1508

rule.

Q What? A With a rule.

Q How long was the rule? A It was a six foot rule.

Q How did you get it on the ceiling? A By placing it between the two holes.

Q What were you standing on? A On a step ladder I found on the premises.

Q Who furnished the step ladder? A I found it there.

Q Did you obtain the consent ^{of} the Pennsylvania Railroad Company to make these measurements? A No, sir.

Q What time or day did you go there? A About half past six.

Q In the evening? A In the evening.

Q Did anybody go with you? A Yes, sir.

Q Who? A Well, a gentleman by the name of Mr. Gil-

bers.

Q Gil-ers? A Gil-ers.

Q Did he help you? A I don't see that that makes any difference.

Q Did he help you? A We did not help me make any measurements.

Q Were you there? A Counselor for the defense.

Q How long were you there? A I was there about five

minutes and how many people were in the room.

CASE # 1508

Q And you had a six foot rule? A Yes, sir.

Q Did anybody interfere with you while you were making these measurements? A No, sir.

Q Did you go up on the second floor? A Not that night.

Q How many times did you visit that toilet altogether, or the floor above? A About half a dozen times.

Q How many times did you go on the floor above? A Once.

Q At that time had this piece of wood been cut out of the ceiling? A Yes, sir.

Q You never went up above when there were two holes ~~xxxx~~ through which you could look down, did you? A No, sir.

Q And this diagram shows an estimate as a result of certain calculations you have made as to where the holes must have been? A Yes, sir.

Q But you never looked down through the two holes, these holes I have here, that were the holes in the ceiling?

(Exhibiting People's Exhibit No. 3) A No, sir.

Q At the time of the commission of the crime? A No, sir.

MR. MCCORMICK: That is all.

JAMES WEEKLY resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. TALIAFERRO:

Q Now, as I understand the second time you went there was on Saturday morning about half past one o'clock? A Yes, sir.

Q That is half past one midnight? A Yes, sir.

CASE #1508

Q "Past midnight?" A Yes, sir.

Q Did you go down with him at that time?

A No, sir.

Q He worked in Jersey, didn't he? A Sir?

Q He worked in Jersey? A Yes, sir; he resides in Jersey.
Q He doesn't come from me.

Q Did you notice there was only one hole in the ceiling
at that time? A Only one hole in the ceiling at that
time.

Q (to the Court) You are referring to the wooden ceiling
are you? You are now talking of the wooden ceiling over the
toilets? A Yes, sir.

Q Over toilets One and Two? A Yes, sir.

Q Was there any broken window there at that time?

A No, sir.

Q And was the lower right hand--

MR. ROSEN: He has been all over this thorough-
ly.

MR. TALLANT: O: I was interrupted.

THE COURT: I will allow it. Go ahead.

Q At that time was the lower right hand window over the
toilet--? A No, sir.

Q Now, when did you next go back again after that time?

A When did I next go there?

Q Yes. A Oh, yes, today night; I couldn't say if it was

CASE # 1508

before midnight or after midnight.

Q Was it after dark? A Yes, sir.

Q Going back a little bit-- A It was between eleven and one o'clock.

Q That was Saturday night? A Yes, sir.

Q Now, the first time you went there, was it daylight or dark? A The second time?

THE COURT: The first time you went there, was it daylight or dark?

THE WITNESS: It was in the evening, daylight.

Q Then, the second time you went there it was dark? A Yes sir.

Q Were the two lights over the toilets burning, or not, when you went back there the second time? A I don't think they were burning, I could not state positively as to that.

Q I mean the second time? A The second time, yes, sir, they were burning but the lights were--

Q I just asked you were they burning, yes or no? A Yes, sir.

Q What kind of lights were they? A They were gas lights, with a mantle, the mantle burner, and they had, as near as I remember the mica globe over the mantle burner.

Q There was a chimney and globe besides? A Yes, sir, there was a globe, a shade, on top of the globe, I should say.

Q Now, what condition did you find those lights in the

CASE # 1508

second time you went there? A I found that the light--

MR. McCORMICK: Objected to as immaterial and irrelevant. There is evidence as to the condition of the lights on the night of the 24th of August.

THE COURT: I think I will sustain the objection, because it would not be probative of what their condition was on the night of August 21st. It is a variable thing.

MR. TALIAFERRO: Let me ask your Honor this question: This is the Saturday night, the night I am asking about. Suppose this witness had found those lights in such a condition that you could hardly see a light through them.

THE COURT: I should consider it immaterial.

MR. TALIAFERRO: Wouldn't it be a fair inference, as a matter of circumstantial evidence?

THE COURT: I think not, and for that reason I exclude it. If there was evidence in this case, for example that the gas was fully turned on on the occasion when these witnesses for the People say that they saw certain things, an evidence that it was likewise fully turned on when this witness was there, then you would have established a similarity of condition, and I would have permitted the testimony, but there is no evidence of that kind.

MR. TALIAFERRO: I take an exception.

Q Did you examine those lights the first time you went there? A I did not.

CASE # 1508

280
Q Now, the third time you went there was when? A The third time I went there was on Saturday afternoon.

Q About what time in the afternoon? A I went there with my wife, when we came from the Tombs.

THE COURT: You are just asked the hour. Now, strike all that out. Just pay attention to the question. What was the hour?

THE WITNESS: I could not state the exact time.

Q Well, as near as you can? A I should judge between three and four o'clock.

Q (By the Court) In the afternoon? A In the afternoon, yes, sir.

Q At all events it was before sun down? A Yes, sir.

Q And your wife was with you at that time? A Yes, sir.

Q Where had you been? A Up to the Tombs, to see the defendant.

Q Did your wife go into that toilet room? A Yes, sir.

Q Did you and she together examine the condition of the window at that time? A We did.

Q That was Saturday afternoon? A Yes, sir.

Q Was that lower right hand window over toilet No. One broken at that time? A There was no window broken.

Q Not saying what you said to your wife. Did you call her attention to it? A I did call her attention to the window.

Q Did you call her attention to the hole in the ceiling?

CASE 1508

A I did.

Q Was there one hole at that time, or two? A One hole.

Q That was on Saturday? A Yes, sir; Saturday afternoon.

Q When did you go back there again? A That night,
between eleven and one o'clock.

Q That was Saturday? A Yes, sir.

Q Who went with you at that time? A I was alone.

Q Alone? A Yes, sir.

Q What did you do there then? A Examined the window.

Q

Q What did you find there then? A I wanted to see if any
changes had been made.

Q Had any changes been made at that time? A Not any.
The lights were in better condition than they were
before.

Q Then after did you go back there again? A I went there
on Monday night.

Q Who went with you at that time? A No one.

Q What condition did you find the window in on Monday
night when you went there? A Just the same; no change. On
Monday night you mean, the window?

Q Yes. A I found that the glasses had apparently been
cleaned up. I tried to find out from the porter--

THE COURT: Never mind that.

A (Continuing) The glasses were apparently cleaned, and the

CASE #1508

lower left hand pane as you look at the window standing outside of the building was cut absolutely true; there was not a flaw.

BY THE COURT:

Q When you say cut what do you mean? A I mean that, instead of breaking, it indicated that, as a glazier would take a tiler and lay it on the glass and use a cutter, absolutely smooth, without any cracks or anything.

Q In other words you say when you looked on the occasion that you are now talking about the glass was not wholly in that pane? A Yes, sir.

Q It was partially cut? A Yes, sir, as near as I could judge, one half, as near as I could measure with the eye.

Q Upper half or lower half? A The upper half was removed. No sign of violence on the sash.

BY MR. TALIAFERRO:

Q That was the left hand looking from the outside? A The one that looks into the toilet room; not the one that looks into the toilet booth.

Q Was any one with you that night? A Sir?

Q Was any one with you at that time? A No, sir.

Q At ~~that~~ either one of these times, did you make any experiments with the single hole in the ceiling?

THE COURT: Yes or no?

A I did.

Q What experiment did you make?

CASE # 1508

MR. DUNN: I object.

lim

THE COURT: I will allow ~~xxx~~ to state what he did.

THE COURT: Now, what did you do?

Q When did you do this? Was it on the night, or Sun-

day? A It was on the night. I mounted the part-

THE COURT: Now, what did you do?

Q Now, what did you do? A I did what he did.

THE COURT: Now, what did you do? A I did what he did.

Q The second time you did it? A I did it both times.

Q The first time you did it? A The first time I did it was a visual examination, because Mr. Dunn--

THE COURT: No "because". That is all you did.

Q Mr. Dunn was with you? A Yes, sir, Mr. Dunn was with me the second time I mounted. I put my foot on the paper receptacle.

Q Did what? A I placed my foot on the paper receptacle and the other foot then on the hook, and mounted on top of these partitions.

Q Which partition did you mount on top of? A The one between toilet No. One and No. Two, or the two next to the window. I took my rule, and I shoved it up into this hole.

Q Is that the same rule you have in your hand now?
A Yes, sir. I used it in that manner (illustrating). It was

CASE #1508

a foot rule. I shoved it up, and I found I could not reach anything on top, so I opened it up, and I found that at about 10 inches I came in contact with something solid. I tried to push that, to see whether there was a hole up there, covered over, or anything, but I could not force it and I could not get it up any more. That is all, sir.

Q. Now, sir, you said that the hole was nearest the ceiling, and that it was about four feet from the wall. Is that correct, sir?

A. Yes, sir, that is correct, sir.

Q. Now, with respect to the top of the partition, where was the hole? Was it near the top of the partition?

A. As best of my judgment, I think it was near the top of the partition, but I think it was further away from the window than what the partition is.

Q. In other words, if the partition had been carried up to the ceiling, the top of that partition would have been four to five inches nearer the wall in which the window was?

A. Exactly, sir.

Q. Then the hole as you saw it there on that night?

A. Yes, sir, exactly so.

BY MR. TALIAFERRO:

Q. What else did you do at that time? And there was only one hole at that time? A. Only one hole at that time.

ASE 1508

Q You have stated that? A I took different measurements, to see the possibilities - I took the lines I saw and then

and let it lay over the edge of this sheet of tin, to

On the line of vision was a black hole, and the other

[Faint handwritten notes at the bottom of the page]

[illegible][illegible]

1. The first was the "The Great Wall of China" which was built by the Chinese in the 7th century BC. It was a series of walls and fortifications that stretched across the northern border of China to protect it from invasions. It was one of the most famous and longest man-made structures in the world.

...is a logical impossibility.

FILE NUMBER: 15-176-Sub A-14.

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Now a good part of it entered into

the hole that you have been talking about, and right against

the surface of that tile nearest to the window? Yes, sir.

Q And nailed likewise against the top of the partition between booth One and Two? A Yes, sir.

Q Would strike there, if continued down towards the

Q. How thick is it? A. I think some five and a half inches.

BY MR. TALLMENDO:

Q. From the hole in the partition? A. From the hole

in the position between the two booths.

Q Same size and one half inches? A Yes sir.

CASE #1508

BY THE COURT:

Q In other words you say a straight rod resting against the side of the hole which you saw in the ceiling, and resting against the top of the partition between booth One and two nearest to the window? A Yes, sir.

Q Extending down to a level of the hole in the partition between One and Two would be about five inches away from that hole, and nearer to the wall in which the window was than that hole? A Correct, sir, I think five and a half inches.

BY MR. TALLENTINO:

Q Five and one half inches. Now, Mr. Weikly, did you at any time go there since that time and make any tests with your coat sitting down upon the toilet seat? A I certainly

Q Under whose advice did you go? A I went first--

MR. MCC REICK: I object to that.

THE COURT: Objection sustained. It is immaterial.

He went.

Q (Continuing) Of my own, and then I went on your advice.

THE COURT: Strike out the answer because I have sustained the objection.

Q Did you go there and make a test with this coat hung upon that hook? A Yes, sir.

Q The coat I hold in my hand, being Defendant's Exhibit D. State the result of that test? What was the result of that test?

THE COURT: I will allow him to state what he saw.

CASE # 1508

Q State what you saw? A I saw that the coat--

BY THE COURT:

Q In the first place, tell us where you stood at the time you looked? A I stood at the door.

Q What door? A The door which would enter the booth.

Q Which booth? A No. 1, next to the window, in the corner.

Q You stood--did you stand inside of a booth, or outside of it? A I stood outside of it.

Q And how close to the door? A I looked through the crack of the door, to see if it were possible to get a line on the hole, and then I opened it wide, and stood in front of the coat.

BY MR. TALLANTIRE:

Q While standing there what did you see?

MR. MCCORMICK: Objected to as immaterial and irrelevant. It is not what he saw he went, it is what happened between other people on the 24th of August.

THE COURT: I think you have not placed this witness by his testimony in any position corresponding to the position testified as having been occupied by any of the witnesses for the prosecution. Therefore I will sustain the objection.

MR. TALLANTIRE: I will put it in a different form.

THE COURT: If you locate him in any position test-

BY MR. TALLANTIRE: I will put it in a different form. If you locate him in any position test-

CASE #1508

will receive the evidence.

Q When you had this coat hung up, on that nail, in booth No. One, and your son, the defendant, was sitting upon the seat in Toilet No. One where were you standing? A In front of the booth.

Q Were you in the door? A No, sir.

Q Were you outside the door? A Outside the door.

Q How far from the door entrance? A Right at the door.

Q Right at the door? A Yes, sir.

Q With the door open? A Yes, sir.

Q Then what did you do?

THE COURT: I think I will exclude it.

THE WITNESS: Completely--

MR. MCCORMICK: I object.

THE COURT: I object.

THE COURT: I will exclude it for the reason that we have not located this witness at the point at which any of the witnesses for the prosecution said that they were at the time when they claim to have seen what transpired.

MR. TALLAFERRO: If your Honor please, Mr. Carney says he opened the door, and as soon as he opened the door--

THE COURT: Mr. Carney does not purport to testify that he saw it, he says he saw this alleged

CASE # 1508

THE COURT: I will allow it. I am in error.

MR. MCCORMICK: I object to it upon the ground that it has not been shown that these two men, father and son, were occupied in the same positions that were occupied by Carney and the defendant.

THE COURT: I will allow this witness to testify precisely as to the position he occupied, and the position occupied by his son at the time he looked. It appears to be the same.

Q What did you see?

MR. MCCORMICK: I object.

BY THE COURT:

Q You have got to tell us, before you answer that question, what your position was? Were you standing up?

A Standing up, yes, sir.

Q How tall are you? A About five foot seven and three quarters, in that neighborhood.

Q What was the position of your son at the time you opened the door? A Sitting on the toilet seat.

Q Sitting erect, or leaning forward? A No, sir, leaning on his knees, in the natural position.

Q Leaning forward with his elbows on his knees? A Yes, sir.

Q Looked in what direction? A Right out through the door into the hallway of the smoking room.

CASE # 1508

Q. His head was how close to the partition between booths 1 and 2? A. Within two inches.

Q. And with his head how close from the hole in that partition? A. Right out of it, the hole.

THE COURT: I will allow the evidence.

BY MR. TALIAFERRO:

Q. Now, what did you see? A. I could not see from the front his head, or what position he was in.

Q. Could you see his mouth? A. Any more than there was a man there with his head hid by this coat and paper receptacle.

Q. Why was it you could not see his mouth and face?

A. Because the coat and the paper receptacle were right in the way.

Q. Did you at any time go on the outside of that building and climb up to the window and attempt to look down through the window into toilet No. One? A. I did, sir.

Q. Who did you go with? A. Mr. Keaton.

Q. And any one else? A. Yes, sir.
another

Q. At what time? A. On February 9th I took two

men back on the case, one by the name of E. W. Nighman and one by the name of J. M. [unclear].

Q. Did you go on the outside of the building, and look up and down the window looking into the toilet?

A. Yes, sir.

Q. Did you see anything? A. Yes, sir. "Lucky" complete

"Lucky" complete

8061
CASE 1508

Q At the time you were looking down through the window over the toilet in No. 1 where was your son George, the defendant? A Sitting on the seat.

Q Could you see him from the outside of that window?

A I could--

THE COURT: Now, "yes" or "no".

A (Continuing) -- faintly discern a shadow; that is all.

Q (By the Court) Through what pane did you look?

A The lower pane, overlapping the toilet booth, the upper part of the pane, and the further up I rose the less I could see.

Q (By Mr. McCormick) What date was that? A February 9th.

Q (By the Court) That is you looked through a piece of glass on that day which formed the lower right hand or left hand pane? A Lower right hand from the outside.

Q In other words, as you were standing, that pane you looked through was on your left hand? A Yes, sir, from the outside, standing on the outside.

THE COURT: Very well; proceed.

BY MR. TALLAMBO:

Q Could you see your son sitting on the toilet? A I could not see it as if it was my son. I could discern a faint shadow.

THE COURT: Can't you answer "no" or "yes".

THE COURT: I want to know if you can see him.

A I can see a shadow, that is all.

CASE # 1508

Q A shadow of the bulk of a person? A Yes, sir.

Q Could you distinguish the features? A No, sir.

Q Could you distinguish the mouth, ear, ^{eye,} or the face?

A No, sir.

Q Who was with you at that time? A F. W. Nighman and Eugene Mahoney.

Q And you had made a similar test with Mr. Keates?

A (No answer.)

THE COURT: Have you done the same thing at any time when Mr. Keates was with you? "Yes" or "No"?

THE WITNESS: No.

Q What did you do when you were with Mr. Keates?

MR. MAHONEY: Let us fix the time.

A Made an examination from the inside, and I alone went on the outside. We didn't go on the outside, because he was afraid to.

Q Now, Mr. Mahoney, did you go there at any time and make a test on the inside of the toilet with your son sitting on the seat in No. 1?

MR. McCORMACK: I object to that as calling for a conclusion, as leading, besides?

A I did, sir.

THE COURT: You may ask him what happened.

Q Well, was your son there when that test made?

MR. McCORMACK: I object to that question.

CASE 1508

THE COURT: Yes, I think the word "test" in that connection is objectionable, and calls for a conclusion. He went in there, and he did certain things and he saw certain things, and what he did, and what he saw he can tell.

Q What did you see?

MR. MCCORMICK: When was this? Fix the time.

THE WITNESS: Sunday morning.

Q Which Sunday morning? A Last Sunday morning. I have forgotten just what train, or what time we left our home, the residential section, but about nine o'clock, nine or nine fifteen.

Q And who was with you then? A F. W. Nighman and Eugene Mahoney.

Q And what did you do, and what did you see?

MR. MCCORMICK: Objected to. It is immaterial what he saw a week ago, or two days ago.

THE COURT: Now, that objection is not well taken. If your objection goes to the point that the conditions were different, that is an objection I would entertain.

MR. MCCORMICK: I don't know what he was looking at.

Q What did you see? A We placed this man with the

Q The defendant? A Yes, sir. This is the coat that is
hung on the hook, put him on the
side, place his face to his face to that hole, to

CASE # 1508

make sure, beyond a doubt, that he would block-- by facing that hole, that he would block the vision through the window behind him.

Q Which window? A The only one that overlaps the booth.

Q The lower right hand window looking from the outside?

A Yes, sir.

Q And Mr. Nighman and who else was with you? A Mr. Nighman and Mr. Eugene Mahoney.

Q I understood you to say it blocked the vision? A Yes, sir. My answers were "How could you see through the back of a man's head?"

BY THE COURT:

Q In other words, standing at that time on the outside, looking through the window, the portions of your son's person that you saw were the back of his head? A Yes, sir, exactly so.

Q What else? Shoulders? A His shoulders.

Q What else? A The back of his head, and just the top of the shoulders; that is all.

BY THE REVEREND JUDGE:

Q The day you were outside looking in, making those observations, what kind of weather was it? Clear or rainy or what? A The outside observations were taken at night.

Q Was it clear or rainy? A It was a clear night.

Q A clear night? A Yes, sir.

Q All these examinations you made outside and in, what

CASE # 1508

was the weather? A Well, the examinations we made inside, I remember on one occasion there was a leak in the roof of the smoking room and the water was running down; that is the reason I know it was raining, at one time; but I didn't pay attention; I don't remember what time that was; but there was one occasion that I do remember the weather was rainy, the water was running down in the smoking room.

Q But the weather was not misty or foggy? A No, sir, I never was there in a fog.

MR. TALLANT: That is all.

CROSS EXAMINATION BY MR. MCCORMICK:

Q You swear that the window looking into that toilet was not broken? A I do, absolutely.

Q Just answer the question.

THE COURT: All you have to do is to say "Yes" or "No". Don't add anything to it. Either yes or no, or you don't remember.

Q You swear that the pane in that window was so covered with smoke that no man could see through it? A I did not say so.

Q You did not, then? A No, sir.

Q You swear that the first evening you went into that toilet it was too dark to see plainly.

Q You swore there was only one hole in the ceiling; did you not? A Yes, sir.

Q You swore that it could not have happened the way

8051
CASE 1508

Carney testified to, didn't you, that Carney could not have seen what he testified to?

MR. TALLAFEMRO: Objected to. I object to that question.

THE COURT: Objection sustained. That is a conclusion.

THE WITNESS: I cannot understand that.

MR. MCCORMICK: But this is cross examination.

THE COURT: But he did not hear Carney. He was not in the room. He don't know what Carney testified to.

Q You swear you got on top of the partition? A I did.

Q And stuck that rule through that hole, the only hole there was there? A Yes, sir.

Q And it struck the floor above? A I don't know what it struck.

Q It went up just about the distance the floor would be? A I didn't make that calculation.

Q And Dunn took you in and watched you while you made all these measurements? A No, sir.

Q Dunn took you in and showed you only one hole there, didn't he? A Yes, sir.

Q And when Dunn showed you the place, you could easily see that the lower right hand window looking into toilet No. One was covered with glass? A I could see that it was--

Q "No" or "Yes"? A (no answer).

THE COURT:

"", if you hear? A It was dirty.

CASE # 1508

Q Was there a lot of it? A Yes, sir.

Q Now, I understand;

Q And you are sure that you are with you, didn't he?

A Yes, sir, he did.

Q You are the General's father? A Yes, sir.

Q You have not said anything; you have

been absolutely plain and unvarnished truth, haven't you?

A To the best of my knowledge.

Q I didn't see him; if you could tell me, was he

thinking I would; I think I am intelligent was.

Q And you are sure that everything you said to me

are true to the best of my knowledge.

MR. MOORE: That is all.

CASE 1508

LOUISE WEIKLY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. TALLAFERRO:

Q What is your name? A Louise Weikly.

Q Where do you live? A No. 26 Clark Avenue, Jersey City.

Q How old are you, Mrs. Weikly? A How old? I will be forty-eight next birthday.

Q Are you the wife of James Weikly, who was examined here? A I am.

Q How many children have you? A Four.

Q How many of them live at home with you? A Three.

Q Does the defendant, George Weikly, live at home with you? A He does.

Q How long have you been living in that house? A Going on sixteen years.

Q Sixteen? A Fifteen or sixteen.

Q Is it a private house? A Yes, sir.

Q Belongs to your husband? A Yes, sir.

Q And your sister lives with you also? A Yes, sir.

Q How old is George Weikly, the defendant? A He will be twenty-six years old the 31st of August.

Q You have no daughters? A No daughters.

Q Does he smoke cigarettes? A Well, I have seen him with little cigars and a pipe, and occasionally perhaps a cigarette, but he could not smoke cigarettes. It affects

CASE # 1508

his head trouble.

Q Does she smoke cigars? A Yes, occasionally.

Q Is he in the habit of drinking intoxicating drinks?

A Oh, no.

Q Mrs. Weikly, were you at the ferry house of the Pennsylvania Railroad at Courtland Street soon after his arrest? A Yes.

Q Do you know what day of the week it was? A Yes, it was the 20th of August.

Q Do you know what day of the week that was?

A Saturday.

Q What time in the day? A In the afternoon, I think, between four and five.

Q Where had you been? A We had been over to the Tombs.

THE COURT: We will take a recess now. Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon until the same is submitted to you.

(The Court accordingly took a recess until Two P. M.)

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

L O U I S E W E I K L Y, resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. RALIAFERRO:

Q At the time you went to the ferry house of the Penn-

CASE # 1508

sylvania Railroad at Cortland street, in the City of New York, on Saturday, the saturday after your son's arrest, who went with you? A My husband.

Q Did you go into the toilet room of the ferry house?

A He asked me to wait outside, but he stayed so long, and I sat around to see if he was coming, and he didn't come, so I went out and I seen the last party who had went in came out, and I went in the room, and my husband was standing there, and he said, "what do you want?" I said, "I want to see if George was in", and he said, "he was in", and I said "will you tell me where he was in?" and he said "he was in the window", and he pointed to the window.

Q And the window over the place where he said George was in?

A Yes, sir.

Q Was that in the toilet next to the window? A Yes sir.

Q Did you look out that window yourself? A Yes, I seen the window there.

Q Was it broken or not? A No, sir.

Q I mean, the one over the toilet? A No, it was not.

Q Was it entire and unbroken? A Unbroken.

Q Did you notice the hole in the ceiling? A Yes.

Q Was there one, or two, holes there? A One.

Q Do you know whether that had a splinter in it?

A Yes, it had a splinter about three or four inches long.

Q I show you people's exhibit 3 (handing same to witness)

Is that the hole? A That is it, yes.

CASE 1508

Q You say there was only one hole there at the time?

A Only one.

Q Did your husband call your attention to that hole?

THE COURT: "yes" or "no".

Q Did your husband call your attention to it? A Yes, he did. I asked him.

MR. TALIAFERRO: That is all.

MR. FOREMAN: That is all. No cross examination.

THOMAS A. WEISS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your full name? A Thomas A. Weiss.

Q Where do you live? A 336 West Twenty-eighth Street, New York.

Q How old are you, Mr. Weiss? A Twenty-nine.

Q Where do you live? A 336 West Twenty-eighth Street, New York.

Q And what is your business? A Railroading.

Q What company are you employed by? A I have been with the Illinois Central.

Q Were you ever with the Pennsylvania? A I was.

Q Were you at any time stationed at the ferry house, in the Borough of Manhattan, City of New York, at Cortland Street? A Well, during the ---

CASE # 1508

THE COURT: "yes" or "no".

THE WITNESS: No.

Q Where were you located here? A Pier One, Four, and Five, Twenty-seven, Twenty-eight and Twenty-nine, Desbrosses Street Ferry.

Q In New York City? A In New York City.

Q Do you know Thomas J. Carney? A I do.

Q The man who was examined as a witness here in this case? A Yes, sir.

Q Were you at any time; about the 2nd of September, about that time, going across the Hudson River to Jersey City on a ferry boat with Thomas J. Carney? A I was.

Q Did you have any conversation with him? A I did.

Q Did you in that conversation say to him, "Mr. Carney, you are looking bad; what is the trouble?" A I did.

Q Did he say, "everything is the trouble"? A He did.

Q Did he say, "I have got a case. I have got absolutely nothing against the man", and that he was a breakman on the Pennsylvania Railroad? A No, he didn't say breakman on the Pennsylvania. He said he was a breakman.

Q Did he say he had nothing against him? A Absolutely nothing.

Q And you say that was about the 2nd of September?

A Well, in that neighborhood. As to the date --

Q Did you hear of the arrest of the defendant about the 24th of August, 1911? A I heard of it on the 26th.

8091
CASE #1508

Q On the 26th. Where were you at the time you heard it?
A I was coming from Asbury Park.

Q Who did you get your information from? A From one of the railroad men.

Q Did you go into that ferry house after you had that information?

THE COURT: "yes" or "no".

A Yes, sir.

Q At what time of day or night was it? A It was in the afternoon.

Q Who went there with you? A No one.

Q How came you to go in there? What did you go in there for? A I had to go in to use the urinal.

Q Did you notice whether or not there was any holes in the ceiling? A I did.

Q Over booth No. One and Two? A I did.

Q How many holes did you see there? A One.

Q Where was that hole located? A It was a little this side of the second booth from the water.

Q From the window? A From the water, yes.

BY THE COURT:

Q Now, when you say, "a little this side", what do you mean? A A little to the left.

BY MR. TALLIATERRA:

Q As you go in? A As you are going in, yes.

Q In other words--

213

CASE #1508

BY THE COURT:

Q Was it nearer, or further, from the window than the area of the booth? Take the partition between Booth One and Two? A Yes, sir.

Q And, bearing that in mind, and bearing the location of the hole in mind, and that hole directly above the partition? "yes" or "no". A No, sir.

Q Was it nearer to the window? A No, it was beyond the window.

BY MR. TALIAFERRO:

Q Further from the window? A Further from the window, yes, sir.

Q That is, with relation to the partition? A It was further from the partition.

Q It was more over No. Two than it was over No. One? A Yes, it was.

Q Did you notice at that time the condition of the lower right hand window overlooking booth No. One? A No, I did not.

Q You did not make any examination of that? A No sir.

Q Did you at that time know the defendant? A I did not.

Q Did you know his father, or any member of his family? A No, sir.

Q Did you know a man named George Muller, who stands indicted for the same offense? A I do not.

MR. TALIAFERRO: Examine the witness.

CASE # 1508

CROSS EXAMINATION BY MR. McCORMICK:

Q Did you ever work for the Pennsylvania Railroad Company? A I did.

Q Were you discharged? A I was.

Q How long ago? A About a year ago, or a year and a half ago.

Q Did Dunn work for that Company then? A No, sir, Dunn did not work for that Company.

Q Did you know Dunn? A I did not know him.

Q Did you know Carney? A I knew Carney well.

Q How long have you known Carney? A Well, I have known Carney for about two and a half years, I should judge.

Q How long did you work the the Pennsylvania? A Two years. About three years.

Q How long did you work for them? A About three years.

Q In what capacity? A I started in as a watchman, and I was promoted to a patrollman.

Q In their police department? A In their police department.

Q And you were discharged for mis-conduct, were you not? A I was discharged on a frame-up.

Q On a frame-up. What do you mean by a frame up?

A In getting false evidence against you. They accused me with being up and with five others while at Pittsburgh, when we were on strike. One of the men never had anything to do with it. Yet we were all discharged.

CASE # 1508

Q Did you ever have any trouble with Carney? A Never.

Q Did you ever have any trouble with any man connected with the Pennsylvania? A No, sir.

Q Didn't somebody connected with the Pennsylvania prefer charges against you to your superiors and those charges resulted in your dismissal? A Those are the charges from Pittsburgh.

Q Who preferred the charges? A Lieutenant Bailey, of Pittsburgh, as I understand.

Q How many times have you been discharged? A Once.

Q Where do you work now? A Illinois Central.

Q How long have you worked there? A Four months.

Q In what capacity do you work? A The same capacity.

Q Where is your office? A Jackson, Tennessee.

Q Where? A Jackson, Tennessee.

Q What day was it that you went into the toilet of the Pennsylvania Ferry house in Cortlandt Street? A It was on a Sunday afternoon.

Q What date? A The 27th.

Q 27th of what? A 27th of August.

Q When was the last time before that that you were in New York? A That would be before I went away.

Q When was the last time at that time? A I was not in New York at that time. I was up to see my wife.

Q When was the last time on the 27th of August?

Q When was the last time in New York?

CASE # 1508

Q Where? A 336 West Twenty-eighth Street.

Q Who were you living there with? Your wife? A Wife.

Q What were you doing at the toilet, or down at the ferry house of the Pennsylvania, on the 27th of August, Sunday?

A I went in there to urinate.

Q Where were you on your way to? A Home.

Q Where from? A From my folks, in Newark.

Q In Newark? A Yes, sir.

Q Wouldn't it have been far more convenient for you to have gone ~~from~~ over to New York by way of the Thirty-third Street station of the Pennsylvania? A But you can't get a train every few minutes. I took the first train that came in.

Q And the first train happened to be a train going to Cortlandt Street? A The first train happened to be a train that went into Jersey City.

Q How often had you been to this toilet during the preceding week? A You mean the last week?

Q The week before the 27th of August? A I was down to Asbury Park then.

Q Will you answer the question? How many times during the week preceding the 27th of August were you in that toilet? A I was not there at all.

Q How many times were you in there the week after the 27th of August? A Once.

Q What day? A That was on a Sunday, on the 27th. That

CASE # 1508

was the only time I was in there.

Q I ask you how many times in the week following the 27th you were in that toilet? Well, I will tell you, I --

Q Tell me how many times? A I can't tell you.

Q Were you there once? A I couldn't tell you.

Q How do you happen to remember the 27th? A Because on Saturday I come in from Asbury Park, Saturday before that, and that is the day that I was informed of the arrest.

Q When were you informed of the arrest? Saturday?

A Saturday, the 26th.

Q And when you went in that toilet, did you go in for the purpose of noticing whether there were any holes in the ceiling? A I went in there to urinate.

Q Did you have in mind there was any holes in the ceiling? A I never gave it a thought.

Q Had any one spoken to you about there being any holes in that ceiling? A Yes, sir.

Q Who? A One of the employees of the road, when he was telling me of the case.

Q What did he tell you? A He told me they had made a couple of arrests at the Cortland Street ferry, and they caught them through a hole up in the ceiling.

Q Who was that man? A I am in the habit of talking to so many employees I could not tell you.

Q Can you give me the name of the man? A No, I could not.

CASE # 1508

Q I don't want a long speech; I just want an answer.

THE COURT: He has answered.

MR. TALIAFERRO: He has answered. He says he could not.

Q Where did you meet this man? A It was either on the train coming in from Jersey City, or it was at Market Street, Newark.

Q You say you did not notice the window of the toilet?

A No, sir, I did not.

Q Which toilet did you go into? A I went in the second toilet.

Q Now, it was about five days later that you saw Carney on a ferry boat? A In that neighborhood, yes.

Q And how long had you known Carney? A I had known Carney, well, almost ever since I have been connected with the railroad, I have known Mr. Carney.

Q Did you use to frame up cases? A No, sir.

Q Did you ever know the detectives of the Pennsylvania Railroad Company to frame up a case in which you took part?

A Well, it --

Q Answer the question "no", or "yes"? A Yes.

Q Have you ever helped to frame up a case? A No sir.

Q And yet you say you were discharged for having been charged with framing up a case? A Yes, sir. I was discharged in a frame up. They discharged me on a frame up. They discharged me for being drunk. That is a frame-up.

CASE #1508

Q Yes. Just tell the details of what the charge against you was. A Of being constantly intoxicated from the time I arrived at Pittsburgh until I got back, until I left Pittsburgh.

Q Did you go in the toilet for the purpose of testifying afterwards in favor of this defendant? A After the--

Q "No" or "yes". A After the 27th?

Q Did you go into that toilet--

THE COURT: On the 27th, for that purpose?

THE WITNESS: No, sir.

Q Have you ever talked to the defendant's father about this case? A Only before--

Q "No" or "yes"? A Yes.

Q When was the first time? A In Mr. Tal-- Francis's office. He was present.

Q Where was Francis's office? A At 27 or 28 William Street.

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

Q About when? A I haven't the slightest idea.

Q Well, was it shortly after this-- A It was about five or six weeks ago, I should judge.

Q In the month of February? A Yes, sir.

Q And how did you happen to go to Mr. Francis's office?

A He called me on the telephone.

Q Where were you when he called you? A At the house, my home.

CASE #1508

14.

310

Q Where? A 336 West Twenty-eighth Street.

Q Do you know who gave him your name? A Mr. William Kelly.

Q Who is William Kelly? A Formerly lieutenant of the Pennsylvania police department.

Q Was he discharged too? A Yes, sir.

Q He was discharged from the Pennsylvania? A Yes sir

Q Aint you framing this defense up, or helping to?

A No, sir.

Q You woulding do anything of that kind? A Absolutely not.

Q Do you mean to say that this man Carney, knowing that you had been discharged by his company, told you that he was framing a case up against this defendant; is that right?

MR. TALIAFERRO: Objected to.

THE COURT: Objection sustained.

A He didn't say that he was framing it up.

MR. TALIAFERRO: I object to it.

THE COURT: I have sustained the objection.

Q Do you mean to say Carney said to you "I have got a case against a brakeman, and have nothing against him?

A I do.

MR. TALIAFERRO: Objected to.

THE COURT: I will allow it.

Q "No" or "yes"? A I do.

Q Carney said that to you? A Carney said that to me.

CASE # 1508

Q Why did you go into Booth Number Two? A I just happened to go in there.

Q You testified on your direct examination that you went to a urinal? A I went to urinate.

Q Did you go to a urinal? A No, I didn't go to a urinal. I went to urinate.

Q You went into booth No. Two? A Yes, sir.

Q Did you sit down there? A No, sir.

Q Did you see a hole in the wall, in the partition?

A No, I didn't notice the partition.

Q Hadn't you heard the details of the charge against this defendant? A I heard that he was caught through the ceiling.

Q Did you have any reason for going to booth No. Two?

A I had no reason at all.

Q How many conversations have you had with the defendant's father? A I should judge I have been there about five times, and he has been present.

Q Where? A In Mr. Taliaferro's office, and Mr. Francis's office.

Q Where was this ferry-boat going when you saw Carney?

A Going to Jersey City.

Q From the Cortland Street station? A Cortland Street, yes, sir.

Q Was Carney in the employ of the Pennsylvania railroad at the same time you were? A He was.

CASE # 1508

Q You are employed by the Illinois Central now?

A Yes, sir.

Q Where do you do your work? A In Jackson, Tennessee.

Q How long have you been in New York City? A About seven weeks.

Q Seven weeks? A About seven weeks, seven or eight weeks.

Q You have not been doing any work for the Railroad company in the last seven weeks? A No, sir, I have not.

Q Are you still in their employ? Are you drawing wages? A I am going back. No, sir.

Q You are not drawing any wages now? A No, sir.

Q In other words, you were mistaken when you said you were not employed by the Illinois Central? A I am not drawing any salary, but as soon as I go back I will have another position.

Q You mean you may get another job if you go back?

A They will put me back to work.

Q How long do you expect to stay away? A Well, maybe a week, maybe three weeks longer.

Q Have you any agreement to return to them? A No sir.

Q Why did you stop working for them about six weeks ago?

A Because I come on to see my wife.

Q Isn't it true that you were discharged? A No, sir.

MR. McCORMICK: That is all.

CASE #1508

RE DIRECT EXAMINATION: BY MR. TALIAFERRO:

Q You were asked whether or not you were discharged on account of a frame-up? A Yes, sir.

Q Were there any charges against you? Did you frame up anything? A No, I didn't frame up anything.

Q You mean it was a frame-up against you? A A frame up against the five ~~xx~~ of us men.

Q You were the victim of the frame up yourself? A Yes, sir.

Q And the only charge against you was drunkenness? A Drunkenness. There was several of them, but that was the main one, which proved that it was a frame up.

THE COURT: Never mind what was proved. Strike that out.

Q Were you given any opportunity to be heard in your defense? A None whatsoever.

Q Did they allow you to make an explanation of the situation? A No, sir.

Q Were you in fact, drunk, as you were charged? A No sir

Q Were any of the charges against you true? A No, sir.

Q Do you know who it was that had it in for you that caused your discharge? A Well, that is something I can't say.

MR. TALIAFERRO: That is all.

CASE # 1508

WILLIAM B. KELLY, called as a witness on behalf of the defendant, being first duly sworn, testified

as follows:

EXAMINATION BY MR. TALLAFERRO:

Q What is your full name? A William B. Kelly.

Q Where do you live? A 238 Albany Avenue, Brooklyn.

Q How long have you lived there? A Thirty-nine years.

Q What is your present occupation? A At the present

time I am an employee at present.

Q What is your present line of business? Railroading?

A Railroad policeman, yes, sir.

Q Have you connected at any time with the Pennsylvania Railroad in the City of New York? A Yes, sir.

Q And for how long a time? A Two years and seven months.

Q And when did your relations with the Pennsylvania Railroad Company cease? A October 1st, 1911.

Q And where were you on duty on the 24th of August, 1911? A My territory consisted of the piers of the Pennsylvania Railroad from Pier One North River, to 125th Street, Harlem River, also Desbrosses Street Ferry and Cortlandt Street Ferry.

Q And what was your rank at that time? A I was lieutenant of police.

Q Who holds the position now that you held then? A I

CASE # 1508

think Mr. Bangs succeeded me.

Q Is he a gentleman who has been examined here as a witness in this case? A Well, that I don't know.

Q Did that territory you have mentioned include the Ferry House at Cortlandt Street? A Yes sir.

Q It included that? A Yes sir.

Q And where was your office located? A The office of the police department.

Q Yes? A 109 West Street.

Q That is the same premises as is now the office of Captain Lunn, is it? A I think it is; I have not been there in six months.

Q Right across from the Ferry House? A Just directly in front of the Ferry.

Q And that was your headquarters? A Yes sir, that was our office.

Q Do you know Thomas J. Carney? A Yes sir, very well.

Q A man who was examined here as a witness in this case? A I believe he has been.

Q And how long have you known him? A A little over three years now.

Q Did you, about 5:15---did you on the 25th or the 26th of August, 1911, have a conversation with Thomas J. Carney, while riding on a street car after leaving the Brooklyn Bridge, in regard to the defendant? A Yes, sir, about

CASE 1508

Wallis.

Q With regard to Wallis? A Yes sir.

Q Did he on that occasion say to you, after you had been discussing the case---

MR. McGOVERNICK: I object--I ask that he ask the witness what Barney said, if he said it?

THE COURT: The objection is overruled.

Q Now, on that occasion, while discussing the case with Mr. Wallace, "We have got a brakeman on the Pennsylvania Railroad arrested, who was arrested Thursday night, but we have not got him right; we have got nothing against him." A That is what he said.

Q Did he make that statement? A He remarked that he had nothing against the brakeman, that they didn't have him right.

Q Did he call his name? A No, he just said the Pennsylvania Brakeman.

Q Now, Mr. Kelly, do you know what the condition of the floor was above, over the toilet s Nos. one and two at the Ferry House on the 24th of August, 1911? A Which one you call number one and number two?

Q Number one is next to the window, opening out on the Hudson River, and number two is the second from the window? A Yes sir.

Q Do you know what the condition of that floor was? A In

CASE #1508

regard to what?

Q Whether or not it was opened up or a hole cut in it?

A There was a hole there for some time.

Q What sort of a hole was it? A Well, it was a hole, looked like an old hole they had run some gas pipes through at one time.

Q Where was that hole located? A I think it was over the second one from the window, from the water front.

Q Over the second one? A Yes sir.

Q And do you know who put that hole there? A It was there when I first went with the Pennsylvania Railroad.

Q Was it there at the time you left the service of the Pennsylvania Railroad? A It was there on Sunday, the 27th of August, 1911.

Q Do you know whether there was more than one hole in the ceiling on the 24th of August, the day of the arrest of the defendant? A I can't get that.

Q Do you know whether there was more than one hole in the ceiling over booth number one or number two, at the time of the arrest of the defendant? A There was one ~~in~~ hole there on the 25th of August 1911.

Q How do you know? A Well, it was my duty to report all holes in floors, or any openings at all, connected with the Pennsylvania Railroad ferry houses, piers, or anything where a person might accidentally fall into. That was an order

CASE # 1508

issued some time in 1910 by Nutter, when Nutter was Captain of Police.

Q And did you examine to see---you say this was on the 26th of August? A What is that, sir?

Q Were you in the toilet of the ferry house on the 26th of August? A Yes sir.

Q That was two days after the arrest? A Yes sir, I was in the toilet---Oh, all right, excuse me.

Q And did you look at the ceiling? A To see how many holes there were in the ceiling?

Q Yes? A Yes.

Q How many holes were there at that time? A One.

Q I mean over booth number one, or booth number two, measuring from the window? A Number two.

Q It was over number two? A Yes sir.

Q You say there was only one hole at that time? A One in the ceiling, yes sir.

Q Did you notice the condition of the window at that time? A Only that it was dirty.

Q Did you notice whether the lower right hand window was out, or was broken in any way? A No, I didn't pay any attention to that?

MR. TALIAFERRO: Take the witness.

CROSS EXAMINATION BY MR. McCORMICK:

Q How often during the month preceding the 24th of

CASE # 1508

August, or during the 26th of August, were you going into that toilet? A Every day I worked.

Q Where did you work? A I had every pier, one to Harlem 125th Street, Cortlandt Street and Desbrosses Street.

Q And how many times a day would you go into that toilet? A Twice.

Q You averaged twice a day? A Twice a day.

Q What times of day would you go in there? A Well, between half past eight and half past nine in the morning, and some times after lunch, and some times between four and five.

Q Are you sure that hole was there before the 24th of August? A You mean the single hole, the one hole?

Q The hole that you are speaking about? A Yes sir.

Q Sure about that? A Positive.

Q How long are you able to say positively that that hole was there? A I saw that hole there last Summer.

Q Well, this was last summer? A Excuse me. The summer before, before last.

Q You mean that hole had been there a year? A Yes sir.

Q Did you ever notice a splinter hanging down from it?

A No, not in particular.

Q You went in there--well, if a splinter about six inches long was hanging down from that hole, you would have noticed it, wouldn't you? A Well, it may have been covered with

CASE #1508

cobwebs.

Q Suppose it was covered with cobwebs, you would have noticed it? A I would not have seen the splinter.

Q Supposing the splinter was as big as that ruler, as wide as that ruler, and about five inches long? (Exhibiting ruler to witness) Wouldn't you have noticed it, if you had looked up there? A Well, I can't say that I would.

Q (By the Court) Are you able to say whether the hole that you referred to is either of the holes shown on People's Exhibit 3? A I can't say.

Q How long did you work for the Pennsylvania Railroad?
A Two years and seven months.

Q Were you discharged from the Pennsylvania Railroad?
"No" or "Yes"? A Yes, I was discharged; or yes.

Q What were you discharged for? A The Division Superintendent said that I quarreled with Nutter Ex-Captain Nutter, and that he had signed the papers to discharge Nutter and myself for quarreling. Captain Dunn accused me of writing an anonymous letter in reference to Nutter punching the pay-master aboard the pay-master's boat in the Hudson River some time during the month of August. Mr. Shepard, the General Superintendent, said that they had me down for writing an anonymous letter.

Q You were discharged, and they were not? A I don't know whether Nutter was discharged, or not. They asked me to

CASE # 1508

resign, first. On the 25th day of August, Captain Dunn asked me to resign, and I asked him what for, and he said "I think you wrote an anonymous letter, but I will give you until the first of September." When the first of September arrived, he gave me thirty days more to resign, and I refused, and he discharged me. He could not tell what he wanted me out for.

Q How many other jobs have you been discharged from, if any? A Not any.

Q Where did you work before you worked for the Pennsylvania? A I was in business for myself.

Q Where? A In the liquor business.

Q Where? A In Brooklyn.

Q You mean retail? A Yes sir.

Q You ran a saloon? A Yes sir.

Q How long did you run it? A Seven to eight years.

Q Were you the proprietor of that? A My mother owned it.

Q You did not run it? A I was part owner with her. She owned the property, I had the saloon.

Q Where are you working now? A Not employed at present.

Q How long have you been out of a job? A Since the day I left---where, not directly. Since the day I left the Pennsylvania Railroad in directly.

Q How long? A Five months.

Q What have you been doing during that five months?

CASE # 1508

A Looking for a position.

Q How did you happen to become acquainted with the father of this defendant? A He came to my house.

Q Where? A In 288 Albany Avenue, Brooklyn.

Q When? A On the 9th of February, 1912.

Q And how many times since that time have you talked with him? A In reference to the case?

Q Yes? A Mostly every time I saw him.

Q I didn't ask you that. I asked you how many times?

A Well, I have seen him half a dozen times since.

Q Where did you see him; at your house, or his office, or where? A I saw him at my house, and I saw him in the lawyer's office.

Q Now, you say you looked at that hole on the 26th? "No" or "Yes", now?

THE COURT: Take enough time to think about your answer before you give it, and when you know, answer?

A Yes sir.

Q Did you see that toilet on the 25th of August? A Yes sir.

Q Did you see it on the 27th of August? A Yes sir.

Q Are you sure? A Positive.

Q And yet you don't know there was a splinter hanging on it or not, do you? A No sir.

Q And you went there because you wanted to see the hole?

CASE # 1508

that it was claimed some one had looked through at the time the defendant was charged with committing this crime? A I looked for all holes. That was an order sent out a year or so before.

Q Did you ever report the existence of this hole? A No.

Q You had seen that hole almost every day for a year? A Yes sir.

Q It was your duty to report every hole you saw? "No" or "Yes"? A In the flooring, yes sir.

Q How about holes in the ceiling? A That is part of the floor, isn't it?

Q No. Was it your duty to report a hole that you saw in the ceiling? A Only in floorings.

Q Was it your duty to report this hole that you saw?

A No sir.

Q You were not looking for holes in ceilings and walls, were you? A You were looking for them in floorings? A Yes sir, I was looking for them in floorings, in side of Piers, and so forth.

Q Your attention was attracted to this hole because it was your duty to examine ceilings? A No, I had often seen that hole.

Q Now, as a matter of fact, did not the defendant's father tell you come here and testify that there was one hole there? A No sir.

CASE # 1508

Q On the 25th, 26th and 27th? A No sir.

Q How did you happen to notice that the lower right hand window adjoining toilet number one was covered with glass? A How did I notice it was covered with glass?

Q Yes, didn't you testify to that?

THE COURT: No, covered with dust.

Q Covered with dust? A I often used to stand by the window.

Q What? A I used to stand by that window.

Q Outside or inside? A Well, inside.

Q Why did you use to stand there? A Well, I don't know. Nothing in particular. I have often come out of toilets, after using them and stand and look. I ~~was~~ couldn't say anything in particular.

Q Could you see through that glass? A Well, I wouldn't say whether you could or not.

Q Sure there was a glass in that window frame? A Oh, there was a glass there, yes.

Q On the 25th of August? A Yes.

Q You have had trouble with Nutter and with Dunn, haven't you? A No sir, I had trouble with Nutter. I never had any trouble with Dunn.

MR. McCORMICK: That is all.

BY THE SIXTH JUROR:

Q Can you tell us whether or not you know what caused

CASE #1508

this defendant's father to come to your house in Brooklyn?

A No sir.

Q Did you communicate with him, or with counsel, or with the defendant, that you had information that might be useful to him? A No sir, never saw Mr Weikly until the 9th day of February, I think it was. I ~~am~~ just finished up a case with the Pennsylvania Railroad, a witness for them, and when I arrived home he was in my house.

Q You never had seen him up to that time? A I had never seen him before.

Q You never had communicated with him in any shape or form? A No sir.

Q When you were standing at this window in the ferry house, could you see the boats coming in? A Well, no.

Q Why not? A Those big uprights were there. You might see the upper deck---

Q You could see the bulk head? A You could see if a person walked along the water front, if anybody left the bridge to go in there.

BY MR. McCormick:

Q Did the defendant's father ever tell you how he found out of your existence? A Yes.

Q What? A Why, he had tried one hundred and nine West Street, our office; that is the Penn Police Office, and they had refused it, and he said he got it through some

CASE #1508

gentleman connected with the American Leather Company, I think, or the National Leather Company; that somebody connected with it had asked Mr. Shapard, the General Superintendent, I believe, to give my address to him. He had been two months, he said, trying to find me.

Q Somebody connected with the Pennsylvania Railroad had told him where he could find you? A No; somebody told the gentleman connected with the Leather Company.

Q You don't know that? A I don't know, Mr. Weikly told me that at the time he called on my.

Q You never were connected with that company were you?

A The National Leather Company?

Q Yes? A No sir.

RE-DIRECT EXAMINATION BY MR. TALIAFERRO:

Q He told you that he applied at 109 West Street, to find out where you were located, and they refused to give any information? A That is what he told me, yes sir.

Q That is what Mr. Weikly told you? A Yes sir.

Q That was the 9th of February? A Yes sir.

Q And up to that time you did not know that such a man existed as James Weikly? A Never seen or heard of him.

Q Nor his son, up to the time Carney told you about it? A Never seen or heard of him.

Q You don't know, of your own knowledge, how Mr. Weikly

8091
CASE #1508

the father of the defendant, wanted to get your testimony as a witness? You don't know how that is? A No sir.

Q You don't know whether he learned that you knew of the condition of things, and what was being done by the detectives for the Pennsylvania Railroad or not, 'do you? A No sir.

MR. TALIAFERRO: That is all.

W I L L I A M J. R. K E A T E S, called as a witness
on behalf of the defendant, being first duly affirmed
testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your full name? A William J. R. Keates.

Q Where do you live? A 497 10th Street, Brooklyn.

Q How old are you, Mr. Keates? A Thirty nine years
old, the next fourth of May.

Q What line of business are you in? A I am at present
the manager of the News & Subscription Departments of the
Merchants Plumbers and Fitters magazine, 250 5th Avenue.

Q Do you know the defendant in this action? A Only
since these charges were brought.

Q Did you know him or his father or any member of his
family before the arrest? A I did not, sir.

Q Did you know the defendant, also indicted for the
same offense, George Muller? A I did, sir.

CASE # 1508

Q Did you know him before the arrest? A I did, sir.

Q And did you know his brother before the arrest? A Yes sir---no sir, I did not.

Q His brother? A His brother, I didnot, no sir.

Q You knew him before the arrest? A I did not know his brother before. I knew the defendant.

Q Mr. Keates, did you, on or about the 25th of August, 1911, go to the ferry house of the Pennsylvania Railroad, and go into the toilets at that place? A On the morning of the 26th, I was there, sir.

Q What time in the morning? A Shortly after half past one.

Q What? A Shortly after half past one in the morning.

Q (By the Court) You mean about an hour and a half after midnight? A Yes sir.

Q That was Saturday morning? A Saturday morning.

Q Which was the 26th of August? A 26th day of August.

Q Where did you go there from? A Mr. Weikly and myself, in company with---I went in company with him up to see a lawyer, uptown, and from there we came right straight down and he suggested that we go in there on the way across, to look over the conditions.

Q And had you had any previous conference, in Jersey or anywhere else, with any one in regard to this case?

CASE # 1508

MR. McCORMICK: Objected to as immaterial and irrelevant.

MR. TALIAFERRO: I don't want the conversation, but I want to fix the time, and I want to show why this man was there.

THE COURT: You have it now on the record that he got there at a certain time, and you have got the place he came from. I think that is enough.

Q. Now, did you first meet with Mr. James Weikly? A. At Mrs. Sullivan's house.

Q. Where is that? A. 110 Midwell Avenue.

Q. In what State and City? A. Jersey City, State of New Jersey.

Q. Had you been to Paterson, or Newark, on that day? A. I had been to Plainfield on that day, sir.

Q. Plainfield? A. Yes sir.

Q. You got down to the ferry house, you say, about one or half past one, in the morning? A. Yes sir.

Q. What did you do when you got there? A. Mr. Weikly asked me--

Q. (By the Court) What did you do? Now, that is a very plain question. When you got to the ferry house, what did you do? A. I went into the toilet room.

Q. Well? A. And stood on one side there, and my attention was drawn to various things there.

CASE # 1508

Q Well, what? A (No answer)

Q (By the Court) After you got in there, where did you stand, and what did you look at? A I stood a little apart from the toilets and my attention was drawn to a certain hole that had been bored in the ceiling.

Q (By the Court) Did you look at the ceiling over the toilets? A I did, sir.

Q Over toilets number one and two, that is number one next to the door, and number two second from the window--

MR. McCRAWLEY: I object to the leading of the witness.

THE COURT: Ask him what toilets he looked at.

BY THE COURT:

Q What part of the ceiling did you look at? A The ceiling over toilet number two.

Q What do you mean by toilet number two? A The second toilet from the window.

Q When you looked at that ceiling, where were you standing? A I was standing just about opposite the end of the urinals, towards the outer door.

Q You were in the toilet room? A Yes sir.

Q And about how many feet from the urinals? A I should say about two feet.

Q And about how many feet from the door leading into the toilet that is designated as number two? A Well, I

CASE # 1508

haven't got it exact.

Q Well, about? A There is a passage way there, your Honor.

Q About how many feet were you from the door leading into the toilet which is known as toilet number two? A Pardon me. Repeat that question, please, your Honor.

Q About how many feet away were you, from the door leading into toilet that is known as toilet number two? A I should say a distance of about fifteen feet, I should imagine.

Q And you looked at the ceiling over toilet number two at a distance of about fifteen from the door of that toilet; is that so? A Yes sir.

Q Now, did you look at that ceiling from any other point? A No sir.

Q At that point, did you see any hole in that ceiling, that is to say the ceiling over this toilet number two? A There was only one hole over toilet number two.

Q Was there any hole---did you look at the ceiling over toilet number one? A I did, sir.

Q Was there any hole in that ceiling? A There was not.

BY MR. TALIAFERRO:

Q Was there any hole over the partition immediately over the partition, right straight up over the partition, between toilet number one and number two? A There was only one hole

CASE # 1508

in the ceiling, where that particular hole was, I could not state, to the best of my knowledge it was a little to the left of the partition that is over number two.

Q To the left of the partition between number one and number two? A Yes sir.

Q (By the Court) You are positive there was only one hole? A There was only one hole there, your Honor.

Q Did you notice the condition of the window there that night? A Yes sir.

Q Did you notice the condition of the lower right hand window over toilet number one?

THE COURT: Right hand pane.

MR. TALLAFERRO: Right hand pane.

A Yes sir.

Q Was it broken, or not? A The panes were all in tact, sir.

Q All four were in tact? A Yes sir.

Q (By the court) You mean the glass was in every one of the four panes? A Yes, your Honor.

Q Now when did you go back there again? A On the Thursday following, the night of the 31st--the morning of the 31st.

Q What condition did you find the window in that time?

A I don't recollect. I didn't make any examination. In fact, I didn't expect to be called in this case at all.

CASE #1508

THE COURT: Your answer is, you don't recollect.

That ends that.

Q When you went back there on that day, did you find one or two holes in the ceiling? A I don't remember, sir.

Q Did you take any notice? A No sir.

BY THE COURT:

Q Did you at any other and later time look at the ceiling over toilets one and two? A No sir.

Q Did you at any other or later time look at any of the panes of glass in the window that you have been talking about? A No sir.

BY MR. TALLIAFERRO:

Q Did you at any time go to the ferry house with Mr. George Muller's father? A Yes sir.

Q When was that? A That was the morning of the 31st?

MR. TALLIAFERRO: That is all.

CROSS EXAMINATION BY MR. MCCORMICK:

Q Why did you go to that toilet at 1:30 o'clock in the early morning of the 26th of August? A I went there at the request of Mr. Weikly.

Q Did he say why ~~you~~ he wanted you to go there? A Yes.

Q What did he say? A He said he wanted to see the conditions there.

Q Did he tell you that he had been there before that?

CASE #1508

A He did not, sir.

Q Did he call your attention to the fact that there was one hole there? A He sir, sir.

Q Did you see a splinter hanging down from that hole?

A I did not.

Q If there had been a splinter as wide as that ruler (Exhibiting ruler to witness), and five inches long, would you have noticed it? A I hardly think I would.

Q And yet you would see this hole, which was about two inches in diameter, is that right; you could see the hole clearly, did you? A The hole was there.

BY THE COURT:

Q Look at that board, People's Exhibit #3, and see if there is anything about it which enables you to say whether either of the holes that you see in it was the hole that you say you saw on the 9th in question. A I couldn't say as to that, your Honor.

BY MR. MCCORMICK:

Q Was the hole as large as either one of those holes?

A Yes sir.

Q Was it larger? A I don't think so, sir.

Q Did Mr. Weikly call your attention to a splinter that hung from the hole? "No" or "Yes"? A I don't remember.

Q Well, if he had called your attention to it, you would remember, wouldn't you? A I don't think so, sir.

CASE #1508

Q You remember most everything else that happened that night, don't you? A I can't say that I do, sir.

Q Didn't you go there for the purpose of preparing a defense against these two defendants? A I did not, sir, by no means, I didn't expect to be here.

Q Went there out of idle curiosity? A No, I went there at his request. We were going to Jersey together.

Q Muller's brother introduced you to Mr. Weikly? A No sir.

Q Who did? A Mrs. Muller.

Q Where did Muller live at that time? A 150 Bidwell Avenue.

Q Did he live with his mother? A Which Muller do you mean?

Q I mean the co-defendant? A No, he lived at his home.

Q How long prior to the 24th of August had you known the defendant, Muller? A I had seen him quite a number of times previous to---

Q Will you answer my question?

THE COURT: How long had you known him? It is a plain question.

THE WITNESS: About the October previous, some time during that month.

Q You had been acquainted with him about ten months?

A About that, sir.

CASE #1508

Q Where was he the first time you ever saw him? A In his own home.

Q Had you, prior to that date, been acquainted with any other member of his family? A No sir.

Q How did you happen to go to his home that day? A We were invited there by friends.

Q Friends or friend? A Friends, to spend the evening.

Q Some one who did not live there invited you to Mullers house? A No sir, the people who occupied the floor above, friends of ours.

Q What is their name? A Paxon.

Q What is the name of the person who asked you? A Paxon

Q What is his full name? A Wilfred Paxon.

Q What business is he in? A He is in the silver business, a travelling man.

Q How old a man is he? A I should say about thirty seven.

Q Who was there that night---was this party at the home of Muller or at the home of this other man? A Paxon's on the floor above.

Q Was the defendant Muller there that night? A He was

Q How many people there altogether? A There was about eight, to my recollection.

Q How many of them were men? A Four.

Q And when was the next time that you met Muller? A I

CASE #1508

can't recollect.

Q Well, about how long afterwards. A I can't recollect. We visited backwards and forwards. That is, the families had little social gatherings, and at times he would come into my own home.

Q Where is your home? A It was at that time 148 Bidwell Avenue, Jersey City.

Q How far from Muller? A Next door but one.

Q Isn't he on the same Avenue with you, on the same street? A Yes sir.

Q And you used to see him frequently? A Quite frequently.

Q And by the 24th of August you were very intimately acquainted with him? A Not very intimately acquainted with him.

Q You used to see him nearly every day? A No.

Q Had you ever been in the toilet room of the Pennsylvania Ferry House at Cortland Street before that night you went there with the other defendant's father? A Yes sir.

Q Frequently? A No sir.

Q Do you use that ferry? A Very seldom.

Q How do you come over from your business? A I live in Brooklyn at the present time.

Q Then you were living in Jersey? A Yes sir.

Q I am talking about then? A I didn't come over to

CASE # 1508

New York but very seldom. My business was travelling through the State of New Jersey, the northern part of the State.

Q Now, what time of night was it on the 26th of August, I mean the evening of the 25th, rather, that you met the father of this defendant? A Between half past nine and ten o'clock.

Q Where? A At the home of Mrs. Muller.

Q What were you doing there? A I was called in there by Mrs. Muller.

Q She sent for you? A Yes sir. Pardon me, she did not send for me. She was in my own home when I came home that night. Some one went for her, and she immediately was told who the man was, and she asked me if I would accompany her there.

Q So, you went over to her house? A Yes sir.

Q And you met Weikly there? A Yes sir.

Q The father of this defendant? A Yes sir.

Q Did you have---how long did you and Mr. Weikly stay in that apartment? A Not more than twenty minutes or half an hour.

Q And during that time you were talking about the arrest of these two defendants? A Yes sir.

Q And about the charge that had been made against them? A Yes sir.

Q And you started with Mr. Weikly over to go to the Pennsylvania Trolleys at what time? A Just about ten o'clock,

CASE # 1508

sir.

Q And when you left the house where did you go? A Went to 120th Street and Lexington Avenue.

Q I am talking---This was in Jersey? A Yes. In New York City.

Q Whose house is that up there? A It was---we went to see if we could see the department---we went to see the deputy commissioner of Charities, to see if we could get a pass to go in the tomb to see them.

Q What time of night did you get up there to see the Deputy Commissioner? A About eleven o'clock at night.

Q Did you get a pass? A We did not.

Q And then you came down town together? A Yes sir.

Q What time did you leave the Deputy Commissioner's house? A The exact hour I could not state.

Q What time did you reach the Pennsylvania Station? A A little after half past one.

Q That is, at night? A Yes, in the morning.

Q Did you notice what kind of lights there were there? A It was fairly dim at one end of the station.

Q Which end? A The waiting room.

Q I suppose around where the toilets were you could hardly see anything? A Inside the toilets it was lighted enough.

Q What? A Inside the toilets it was light enough, in-

CASE # 1508

side the toilet rooms.

Q You have no interest in this case at all except that you were slightly acquainted with Muller; is that it? A No interest at all, sir.

BY THE COURT:

Q Why did you not go to a point nearer to the door of toilet number two when you were engaged in the act of looking at the ceiling over that toilet than the distance of fifteen feet? A I didn't want to be called into the case at all, your Honor.

Q How close did you get at any time to the door of toilet number one when you were looking at the ceiling over that toilet? A I stood in the same position all the time, your Honor.

Q So that you stood in a position which was somewhat farther from toilet number one than from toilet number two? A Slightly.

Q From where you stood, was the entire surface of the ceiling over both those toilets visible to you? A Yes sir.

Q Did the partition between those toilets cut off your view of any part of the ceiling over the toilets? A No sir.

W I L L I A M B. KELLY, being recalled on behalf of the defendant, having been previously duly sworn, testi-

CASE # 1508

fied as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q Mr. Kelly, it may be that I misunderstood you, or you misunderstood me. Did you at any time see a hole in the concrete floor above this toilet? A No sir.

Q I mean, at any time before or after the arrest? A No sir.

Q You never saw the hole in the concrete floor above this hole in the ceiling? A No sir.

BY THE COURT:

Q What was the last time, as nearly as you can fix it, when you yourself was in the room over the toilets? A Sunday, August 27th.

Q And in what part of that room were you on that day? A I went all through it.

Q I am talking now of the room over the toilets? A Yes sir, I went all through it.

Q At what hour of the day were you there? A Twenty minutes of nine, between twenty minutes of nine and nine o'clock in the morning. It was my Sunday on.

Q Did you on that day look at the floor of that room? A Yes sir.

Q Was your attention attracted by any circumstance on that date to the floor of that room? A No sir.

Q In other words, so far as you may have looked at the

CASE # 1508

floor on that day, it was merely as a person would look casually at a floor in a room in which he was? A Yes sir.

Q For what purpose were you in that room on that day?

A I made it a practice to go in and out there on every day I was on duty.

Q In other words you were then in the employ of the Pennsylvania Railroad; is that so? A Yes sir.

Q In connection with their police department? A Yes sir.

Q And you were on duty? A Yes sir.

Q And that room was part of the territory that you were expected to observe; is that so? A Yes sir.

Q About how large a room is that? A I am talking about the room that is over the toilets? A Well, it is not quite-- I could not exactly tell you.

Q Well, about how large is it? A It is about---

Q Is it as large as the toilet rooms? A The downstairs toilet?

Q Down stairs? A Not quite as large.

Q Has it a ceiling? That is, has it a slanting roof, or a flat ceiling? A It had a flat ceiling.

Q Was it lighted by windows? A Part of it.

Q Was there any window in it at the end? A Over the toilets down stairs.

Q Now, if you don't understand the question, please

238

CASE #1508

say so? A I don't understand it, your Honor.

Q In the room down stairs, the room I will call the toilet room, at a certain end of it, there are certain toilets? A Yes sir.

Q That you understand? A Yes sir.

Q We have been talking about the room that is over that?

A Yes sir.

Q Now, is there any window in the side of that room in the portion of that room that is immediately over the toilets down stairs? A Well, I don't just remember, your Honor.

Q What is there in that room? What was there in that room, in a general way? A Toilets. It is an old toilet room.

Q Unused toilets? A Yes sir.

Q Any seats, chairs, tables? A I think there is one seat left, one toilet. The others, I think had been taken out.

Q Apart from that, were there any chairs, tables, articles of furniture? A Outside of the toilet, there were two cots, I think. The Red Cross, I think used them.

Q For how long a time were you at any time in that room on the day that you and I have been talking about? A On Sunday?

Q Yes sir. A I walked in, looked around, and went out, the same as I did every day.

CASE 1508

Q In other words, you walked in the room, and looked around. Was there anybody at that time in the room?

A No sir.

Q Did you visit that room more than once on that Sunday?

A No sir.

Q Only once? A Only once.

Q And that was about what hour of the day? A Between twenty minutes of eight and nine o'clock.

Q And you were in it at that time about how long? A Well around fifteen to twenty minutes.

Q Are you able to say whether on that occasion you went over to that portion of that room immediately over either toilet number one or toilet number two, down stairs? "Yes", or "No"? A Did I immediately go over?

Q Are you able to say, during any part of the time you were in that room on that Sunday, you went to that part of the room, immediately over toilets one and two? A Yes, I walked in the room.

Q Did you walk over in that room immediately over toilets one and two? A I can't say I walked over to it, But I was in the room, and looked at it

Q How close at any time while you were in that room on that Sunday did you get to that portion of that room over, immediately over toilet number one or toilet number two?

A I should judge about four feet.

CASE #1508

Q In other words, you got to a point in that room which, as you now recollect, was about four feet away from the space in that room over toilets one and two; is that so? A Yes sir.

Q When just before that Sunday had you been in that room?
A I was in the day before that Sunday.

Q And what hour of that day were you in that room? A About 8 or 10 A. M.

Q Morning or evening? A Morning.

Q And what part of that room did you

A The side of the room.

Q And at that time was there anybody other than yourself in that room? A No sir.

Q And at that time how long did you stay in that room?
A Just long enough to walk in, around and out.

Q Did you observe then whether there was any hole in that floor? A I didn't see any holes, no sir.

Q Did you look to see? A I looked around the floors side of the walls, and so forth, and I saw no holes.

BY MR. TALLAFERRO:

Q Now, Mr. Kelly, you had learned of the arrest of this defendant when you went up there on Saturday, the 26th?

A What is that?

Q You had heard of the arrest of the defendant? A Yes sir.

Q When you went into that room over these toilets,

CASE # 1508

on the 25th? A Yes sir.

MR. MONROE: Now, let him testify, please.

Q And you said that he was detected by a hole in the ceiling?

MR. MONROE: Yes, I object to these questions.

THE COURT: I will allow it. "Yes" or "no".

Q And you, stating that you went into the room, Saturday, and that the defendant had been detected by an observation through a hole in the floor of that upper room? A Well, I can't say that.

Q You don't know? A No, I don't.

Q Now, when you heard of the arrest of the defendant, and going up into that room, did you see any hole in the floor, or in the upper floor over toilet number one or number two? A No sir.

Q Did you go up there for the purpose of observing the condition of that room? A Yes, I went every day for that purpose.

Q If there had been a hole there would you have seen it? A Yes sir.

BY THE COURT:

Q You said there was one toilet seat up in that room, as I understand you? Is that toilet seat over the toilet seat in number one, or the toilet seat in number two or the toilet seat in number three, of the lower toilet floor?

CASE 1508

A I think--I am not sure exactly where it was, but I remember I think I used it once myself.

BY MR. TALIAFERRO:

Q Was it a part of your duty to report any holes that you found on the floors or in the ceiling of that floor?

A Yes sir.

Q It was a part of your duty? A Yes sir. That was an order issued some time before that, that we should report.

MR. TALIAFERRO: That is all.

CROSS EXAMINATION BY MR. MCCORMICK:

Q What time of day did you go up there on Sunday? A Between twenty minutes of nine and nine o'clock.

Q What time did you go up the Saturday before that? A I won't be exact, but in the mornings as a rule I made a round of everything.

Q You used to go in that room every day? A Every day, that it was open.

Q For how long a period of time? A You mean to be in the room?

Q During how many years had you been doing that? A I was in charge of that section---I was sent in charge of all New York some time in February a year ago.

Q And during all that time you every day were going into

CASE #1508

this room? A Well, I would make a round of the piers and the rooms of everything, Desbrosses, Cortlandt---

Q Answer my question. I didn't ask you about all of New York. I am talking about this room. A (No answer)

Q Did you go into it every day? A Every day it was open.

Q Did you have the key to the room? A The porter, I believe, had the key.

BY MR. MCCORMICK:

Q What was the porter's name? A I don't know. They changed porters so often.

Q You used to go in there nearly every day? A Yes sir.

Q But the porter had charge of it? A I wouldn't say who had charge of the key, or who had charge of the room.

Q Did the porter keep the key when he did, didn't he?

A That I couldn't say.

Q When did you use to get the key? A When I would go there the door would be open.

Q (By the court) Did you ever find the door locked?

A I found it locked several times, yes sir.

Q And you don't know whether there was a window in that room, or not, do you? A Well, I couldn't positively state.

Q Isn't it a fact there were four windows in that room?

A I wouldn't say there was not.

CASE # 1508

Q You could not even tell whether there was one, could you?
A No sir.

Q On what day was this defendant arrested? A To the best of my recollection, it was on the 24th.

Q What day of the week was that? A I think it was a Thursday.

Q Now, when was it you were in that room before Thursday?
A I was in Wednesday.

Q Were you in the room at any time during Thursday? August 24th, if August 24th was a Thursday? A I was in in the morning, yes sir.

Q About what hour? A Between half past eight and nine o'clock, after leaving the office.

BY MR. McCORMICK:

Q You have no prejudice against the Pennsylvania Railroad, have you? A No, I haven't got anything against the Pennsylvania Railroad.

J O H N A. K E L L Y called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your full name? A John A. Kelly.

Q Where do you live? A 105 Clifton Avenue, Newark.

Q How old are you? A Thirty four going on thirty five.

CASE # 1508

Q Are you any kind to William B. Kelly who has just been examined as a witness? A No sir.

Q What business are you in at this time? A I am collector and salesman for ~~the~~ Miller & Company.

Q Are you employed by that concern at this time? A Yes sir.

Q Were you at any time employed by the Pennsylvania Railroad? A Yes sir.

Q In what capacity? A In the police department.

Q How long were you employed by the Pennsylvania Railroad? A In the neighborhood of three years. I think it was March 17th 1908, I am not positive, I won't say.

Q In the neighborhood of how many years? A In the neighborhood of three years, going on three years.

Q How long since your employment with the Pennsylvania Railroad Company terminated? A January 4th, 1911.

Q 1911, or 1912? A 1911.

Q Do you remember about the time the defendant was arrested, at the ferry house of the Cortlandt Street Ferry, on the 24th of August, 1912? A I heard about the case, yes sir.

Q When did you first hear of it after the arrest? A It was Saturday, I think, I ^{am} pretty sure it was Saturday.

Q Thursday was the 24th and Saturday would be the 26th? A Yes sir.

CASE #1508

Q And did you go into the ferry house on that day? A Yes sir, I did.

Q Who went with you, if any one? A No one but myself.

Q How came you to go there? A I was talking about the case. I went over to see a friend of mine in New York.

MR. McCORMICK: I object to all this.

THE WITNESS: All right.

Q You went over, and you had a conversation with some one about this? A Yes sir.

Q And you went over and went into the Ferry house? A Yes sir.

Q What did you go in there for?

MR. McCORMICK: Objected to.

MR. TALIAFERRO: Well, if counsel objects to it, I will withdraw it, and ~~if~~ let him ask him what he went there for.

Q When you got inside the Ferry house, did you make an examination of the ceiling?

MR. McCORMICK: Objected to as leading.

THE COURT: Yes, when you got inside the ferry house what did you do? What did you look at, and where were you, and what did you do?

THE WITNESS: I went to the toilet, and looked at the ceiling, and looked at the window.

Q What condition did you find the window in? A The

CASE # 1508

window was dirty, smokey.

BY THE COURT:

Q How many panes of glass were in the window that you looked at? A There was four panes of glass.

Q Were all the panes in it? A Yes sir.

Q Were any of the panes broken? A No sir.

Q What window did you look at? A The window over the toilet.

Q Over what toilet? A Over the first toilet, near the window.

BY MR. TALIAFERRO:

Q Did you look at the ceiling, to see how many holes there were in the ceiling? A I did.

Q How many holes did you see in the ceiling over either toilet number one or number two? A I saw one hole over number two.

BY THE COURT:

Q Did you see any hole over number one? A No sir.

Q Did you look at the ceiling? A Yes sir, I examined the ceiling.

Q Was there any hole over number one? "Yes" or "No"?

A No.

BY MR. TALIAFERRO:

Q Did that hole have a splinter out of it? A Yes sir.

MR. TALIAFERRO: That is all.

CASE # 1508

CROSS EXAMINATION BY MR. McCORMICK:

Q Show me the size the splinter? A It was a long splinter, hanging down off this hole; I couldn't say the size of it now.

Q Didn't a witness who just went out of this court room tell you to swear to it? A No, he did not. I wouldn't listen to a witness tell me that.

Q You had been going into that toilet for a year before that? A Yes sir.

Q How often had you seen that hole before? A I don't ever remember noticing the hole until after that case, that is what brought my attention to it.

Q Did it look like a fresh hole? A It did look like a fresh hole, yes.

BY THE COURT:

Q At what point did you stand when you saw the hole?
A Right directly in front of the toilets.

Q And how far away from the door of the toilet number two were you when you saw the hole? A Well, I was about six or seven feet, somewhere around that.

Q Where were you when you looked at the ceiling in toilet number one? A Where was I?

Q Yes? A I was directly in front of the toilet, about five or six feet in front.

Q Did you look at the ceiling over either of the toi-

CASE # 1508

lets while inside of either toilet? A No, I was on the outside when I looked up at the ceiling.

BY MR. MCCORMICK:

Q Are you a discharged employee of the Pennsylvania Railroad Company? A I am.

Q You have no feeling of prejudice against the Pennsylvania Railroad Company? A Not a particle.

Q And you have not testified to anything here because either of the defendants or their relatives told you to, have you? A What is that?

Q You have not testified to anything here as a fact simply because you were told to do it by the defendants or their relatives? A All I know about the case---

Q "No" or "Yes"? A No.

Q How did you come to get in this case? A I was called by Mr. Francis there into the case.

Q How did he find you? A I got a telephone message, and I come in from Newark.

Q Who telephoned? A I couldn't say who telephoned, but there was a telephone message for me to call at Mr. Francis office, 27 William Street.

Q Had you talked to any one about this case before that? A Directly before I was notified on the telephone?

Q Before, yes. A No sir; it was a surprise to me.

Q Do you know how Francis got information as to you? A

CASE #1508

I certainly do not. I don't know the first thing about it, who told him, or who did not.

Q You had never spoken to any one about it, had you?

A No sir, not until after I was notified at the office, Mr. Francis office. I talked about it afterwards, but not before.

Q You have no interest in this case? A No sir.

Q Who paid your expenses here from Jersey? A Mr. Weikly promised to pay my expenses.

Q He did not promise to pay you anything else? A No.

Q You don't expect anything else? A Only my expenses I expect my expenses.

Q You have no prejudice against the Pennsylvania, and that has nothing to do with your appearing here as a witness? A No sir, it has not.

Q What time of day was it you went into that toilet after the 24th of August? A It was about four o'clock, between three and four in the afternoon; I was going home.

Q Where were you employed then? A I was not doing anything at the time.

Q You were out of a job? A Yes sir.

Q The Pennsylvania discharged you on what date? A On January 13th, 1911.

Q And then you were out of a job until August 1911; is that right? A No, until October. I was doing work, but not steady employment.

CASE #1508

Q Will you answer my questions "No" or "Yes", and we will get through quicker? A Yes sir.

Q Were you out of a job in January, when you were discharged from the Pennsylvania Railroad Company, until the 24th of August 1911? A Well, I was not out of work. I was working but not permanently.

Q Who were you working for? A For the Singer Sewing Machine Company, selling sewing machines.

Q You have had a number of jobs since the Pennsylvania discharged you? A Two.

Q Most of the time you were not doing anything? A I was selling sewing machines.

Q How long did you work for the Singer Company? A Two or three months.

Q And how long did you work for the Miller people? A I am with the Miller people yet.

Q How long did you work for them? A Since October 9th until the present time. I am there now.

Q How many days have you taken away from your business to attend this trial? A I have not figured it up.

Q Are you drawing a salary out there? A No sir.

Q Sellin gon a commission? A Yes, I am under salary. I thought you meant am I drawing salary while I am here.

Q That is what I mean? A I have got a salary, but I am not getting paid while I am over here.

CASE # 1508

MR. McCORMICK: That is all.

JAMES W. KELLY, being recalled on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. TALISFERO:

Q Mr. Weikly, state, if you know, how-- State if you procured the presence of William B. Kelly as a witness in this case.

THE COURT: "Yes" or "No".

A Indirectly, yes.

Q Did you also procure the evidence of Mr. Weiss? A No sir.

Q The presence of Mr. Weiss? A No sir.

Q Well, I mean, you are the cause of his being here? A Certainly.

Q And also Mr. Keates? A Yes sir.

Q How did you ascertain the evidence of the two Kellys and Mr. Weiss, former employees of the Pennsylvania Railroad? How did you find out that they would be important witnesses in this case? A Through investigating men who were in the employ of the Pennsylvania Railroad told me that no man would dare to testify who was in the employ.

Q Did you know William B. Kelly before that time? A Never seen the man in my life.

Q Did you know Weiss before that time? A Never had

CASE # 1508

met him.

Q Did you know John A. Kelly before that time? A No sir.

Q Then you learned of the existence of these men and the importance of their evidence through employees of the Pennsylvania Railroad? A Yes sir.

MR. TALIAFERRO: That is all.

CROSS EXAMINATION BY MR. McCORMICK:

Q Who are those employees? A I am under promise to those men not to compromise them.

MR. McCORMICK: I ask that question.

MR. TALIAFERRO: I object to this, if your Honor pleases. It is wholly immaterial.

THE COURT: I don't think it would serve any usefulness purpose.

Q You say you made an investigation. What was the first thing you did? Who was the first man connected with the Pennsylvania that you talked to?

MR. TALIA FERRO: I object to that, if your Honor pleases.

A I am under obligation not to state.

THE COURT: I can't see that it will serve any useful purpose.

MR. McCORMICK: He has testified he conducted an in

CASE # 1508

vestigation.

THE COURT: I know, in the exercise of the discussion, I think I shall rule that the witness should not answer. I can see why he does not want to say. I will strike out his evidence in that regard, if you want it out.

MR. MCCORMACK: I don't think it makes any difference.

THE COURT: Very well. That is all. Step down, Mr. Witness.

EUGENE MAHONEY, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your name? A Eugene Mahoney.

Q Where do you live? A 279 Union Street, Jersey City.

Q How old are you, Mr. Mahoney? A I am now fifty seven

Q What is your business? A Railroad engineer.

Q On what railroad? A Centfal Railroad of New Jersey.

Q How long have you been a locomotive engineer on that road? A About twenty six years.

Q Are you personally acquainted with the defendant, George Weikly? A I am.

CASE # 1508

Q How long have you known him? A Since his childhood, a little fellow.

Q How far do you live from him? A At the present time, about four blocks.

Q Have you at any time lived closer than that? A Oh, yes, I have lived right across the street for several years. For several years we lived directly opposite each other, across the street.

Q Have you a family of your own? A I have.

Q Sons and daughters? A One son and one daughter.

Q Do you know the general character and reputation of the defendant, George Weikly in the neighborhood in which he lives? A I do.

Q Is that character good, or bad? A First class, always.

Q Mr. Mahoney, did you at any time go with Mr. James Weikly to the ferry house at the Cortlandt Street ferry, and climb up on the outside of the building, and attempt to look in the window? A I did.

Q Down into Booth No. One, or toilet No. One? A Yes.

Q State what you saw, or what you failed to see? A Looking through that window, I could see a man when he was standing up, he head, and when he was sitting down I couldn't see him.

BY THE COURT:

Q Through what pane did you look? A I looked through

CASE # 1508

the pane to the right, the one that was directly over the booth, over the toilet where the seat was.

Q Was the glass in or out? A The glass was in.

BY MR. TALLANTIRIO:

Q When was that? A That was on the night of February 9th.

Q February 9th? A Yes sir.

MR. McCORMICK: I want to strike out the last sentence, in regard to the window. It is irrelevant. Our own witness says before that night they put in a new glass.

THE COURT: It is important to ascertain what the condition was at the time this witness looked in. I think I will let it stand.

Q Did you at any time after that go down into the toilet and seat the defendant upon the toilet seat? A Yes sir.

Q When was that? A That was on Sunday morning, the 17th.

Q That was last Sunday? A Yes sir.

Q Who was with you? A Mr. Nighman, Mr. James Weikly and the defendant.

Q And yourself? A And myself.

Q Did you hang the coat of the defendant---

MR. McCORMICK: Objected to.

Q Just to hang what you did. A Myself, I didn't do anything personally, excepting look in the toilet after the cot

CASE #1508

coat had been hung on the hook.

Q What did you see? A I saw the coat hanging on the hook. It came down over the toilet box or over the paper box, almost to the bottom of the paper box. I then saw Mr. Valente stand his head at the opening in the partition, and I could not see his face. The coat hanging between me and him prevented his head from my view.

MR. TALLAFERRO: That is all.

MR. TALLAFERRO: That is all.

BY THE COURT:

Q Where were you looking? Where were you standing? Where were you at the time? A On Sunday morning?

Q Where were you at the time that you looked into the toilet? A Standing in front of the door.

Q And when you say standing in front of the door, do you mean that you were in the toilet room? A Yes sir.

Q You were in the toilet room outside of the toilets? A Yes sir.

Q You were outside of which toilet? A The one next to the window, to the wall; that is number one, I believe.

Q And when you were looking was that door open or closed? A There was no door there, your Honor. There was no door in it.

MR. TALLAFERRO: The door had been taken off, and the screens put up.

8051
CASE 1508

Q Had you opened the screen? A No, the screen was a stationery object, and stands a distance away from the door, running in a groove and with the door.

Q You pay careful attention to me, now? A All right.

Q You went to that toilet room, as I understand you, on the 17th of this month, is that so? A Yes sir.

Q You had been in that toilet room on an previous occasion? A Yes.

Q On the night of February 17th, is that correct? A On the night of February 17th.

Q On the night of February 17th, did you see a coat in the night of February 17th, is that correct? A Yes sir.

Q On which occasion was it that you saw a coat inside the toilet? A February 17th.

Q What was the position of you were in at the time that you saw the coat in the toilet? A Standing up.

Q Where was the coat in the toilet when you saw it? A Hanging on the hook.

Q On which side of that toilet is the hook? A On the right handside; that is with a man sitting on the toilet seat, the coat would be on his right hand. A man standing in front and looking in the toilet, it is on this left hand.

Q It would be on the side of the toilet furthest from the window? A Yes sir.

Q Did you at any time on March 17th yourself step inside

CASE 1508

of the toilet? A Not inside, no.

Q How far in front of that toilet was the screen? A Well I didn't measure it.

Q About? A I suppose two feet, probably more.

Q That is to say, two feet into the toilet room, and two feet beyond the partition? A Yes sir.

Q Between the toilets was a screen? A In front of the toilets.

Q In front of the toilets? A Yes.

Q And you were on the toilet room side of that screen?

A Yes, sir, I was between the screen--

Q You were between the screen and the toilet? A Yes sir I was between the screen and the toilet.

Q In other words, you were in the position--a man would have been in about to open a door going into that toilet, had there been a door there? A That is right.

Q Who was it that hung the coat on the hook on March 17th? A I think it was the defendant, or his father; I am not positive; either one of those two.

Q Did you see the person who hung the coat up on the hook in the act of hanging it up? A Yes, I did. The coat was---as I refresh my memory, the coat was hung up twice, and I think one time--

Q The first time, who hung it up? A Mr. James Weikly, the first time, and Mr. George Weikly the second time. That

8051
CASE #1508

is the way it comes to me know.

Q Do you recall how the coat was handled by the man who hung it up? With both hands, or one hand? A No, I don't.

Q What part of the coat was fastened to the hook? A The collar the centre of the collar. I noticed that particularly, as I wanted to see its length.

Q And how about the swing of it? A It was hung from the centre of the collar, and hung down.

Q Were you able to see, by looking at it, whether it was hung by a strap? A Yes---it was hung just on the collar.

Q On the collar? A Yes, I don't think it was hung on a strap.

Q How far down with respect to the top of the paper box did that coat hang? A I looked at it, and my impression is that at that time it covered the entire paper box with the exception of an inch.

Q Is that hook directly above the paper box, or to one side of it? A Well, I couldn't say whether it was in the direct centre, but it hangs in such a line that the coat hanging on it cover the paper box, so it must be almost in a line. I couldn't say about that positively.

Q Now, while you were looking in the toilet and after the coat was hung up what was the position of the man on the seat of the toilet? A Well, his head--place his head over along side of the paper box, where a portion of the partition

CASE #1508

had been removed, sitting on the seat.

Q. Where with respect to the paper box was that opening in the partition? Above it, below it, or to one side of it? A. Right on one side of it.

Q. On the same level as the box? A. About the same level, a little above, or a little below, quite a large opening.

Q. Was the opening to the rear of the toilet? A. Between the paper box and the rear of the toilet.

Q. Did the head of the person touch the coat referring to the person on the seat? A. Well, I should say it did, I can't say positively about that. I stood out in front of the door, and the coat obscured the view of his head from me while I was standing there, but to say the coat did not touch his head, I could not say that.

Q. When you stood in front of the opening where the door would have been, were you in the middle of that space, or to one side, or the other? A. Right in the centre.

Q. Directly in the centre? A. Yes, right in front of the door.

Q. What kind of a hook was that? A. The regular iron hook, like you screw fast to a partition, with a couple of screws. I don't know just how many screws, but that kind of a hook. The regulation hook.

Q. The fact that the coat was hung by the collar and not

CASE #1508

by the strap, did that cause it to hang out further from the partition? A No, I should think not. I don't know why it should.

Q The strap---A It did not have any bearing on that, because the paper box threw it out anyway, no matter how it had been hung, whether by a strap, or collar; the dropping over the paper box kpt it away from the wall.

BY THE TENTH JUROR:

Q Was the hook the same as the drawing on that Exhibit (Referring to defendant's Exhibit E)? A Well, I will not swear to the hook.

Q Was it a double hook? A My impression is it was the regular iron hook that is hung up in such places, screwed fast to the wall, with a hook turned up.

Q Do you know whether the ~~end~~ ~~of the~~ coat was hung on the upper or lower part of the hook? A No, it was hung over the main part of the hook, the upper part.

BY THE COURT:

Q You know what is meant by the juror when he says the main part? A Yes, the long part ~~was~~ of the hook, I understand.

BY MR. TALIAFERRO:

Q I will ask you, Mr. Mahoney, if I am permitted to ask you, are you or your family related to the Weikly family in any way? A No sir, in no way at all.

CASE # 1508

Q And you have no interest in this case. A Only to see justice done. No interest whatever.

Q I understand you to say the hole in the partition between No. One and No. Two was between the paper box and the back wall? A Yes sir; that is what I said.

MR. TALIAFERRO: That is all.

BY THE SEVENTH JUROR:

Q Do you know whether that was a double hook? A No sir, I don't even know that, I couldn't say about that.

MR. McCORMICK: Let me ask just one question.

CROSS EXAMINATION BY MR. McCORMICK:

Q A man opening the door of Booth One, that is, reaching off to his right, which is where the handle of the door is, and pulling it open, the hinge being on the left, would enter the booth away over near the right hand side of the door as he went in?

MR. TALIAFERRO: Objected to as hypothetical.

THE COURT: I will allow it.

Q Couldn't he see even if the coat was hanging there, wouldn't he see the hole in the wall of the partition?

MR. TALIAFERRO: I object.

THE COURT: Objection sustained.

MR. McCORMICK: That is all.

CASE #1508

FRANK W. NIGHMAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your full name? A Frank W. Nighman.

Q Where do you live? A 410 West Side Avenue, Jersey City.

Q What is your business? A Real Estate broker.

Q How old a man are you? A Fifth six.

Q Do you know James Weikly and his family? A Yes sir.

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

Q How long have you known George Weikly the defendant?

A Oh, about fifteen or twenty years.

Q How far do you live from where they live? A A block and a half.

Q How long have you been living that distance from them?

A Twenty one years.

Q Have you a family of your own? A Yes sir.

Q Wife and children?

MR. McCORMICK: Oh I object to that.

THE COURT: Objection sustained.

MR. TALIAFERRO: I want to ask him, furthermore, whether the two families are associated together.

MR. McCORMICK: I object to that.

BY THE COURT:

CASE 1508

Q You know people who also know the defendant? A I beg pardon?

Q Are you acquainted with persons who are acquainted with George Weikly? A Yes sir.

BY MR. TALIAFERRO:

Q Are you of any kin by blood or marriage to the defendant?

MR. McCORMICK: Objected to.

THE COURT: I will allow it.

A No sir.

Q You say you are not? A No relation.

Q Do you know what the general reputation of George Weikly for morals is in the neighborhood in which he lives?

A Yes sir.

Q Is that reputation good, or bad? A Good.

Q Mr. Nighman, did you at any time, or did you last Sunday go down to the Ferry house at Cortlandt Street, in company with Mr. Mahoney and Mr. James Weikly? A Yes sir.

Q And did you go into Booth No. One, that is the booth next to the window? A Yes sir.

Q What did you do there, what did you see? A Well, we went there to see whether there was a window light out or not.

Q Last Sunday, I mean? A Yes sir, last Sunday.

Q What did you see? A There was no window light out.

Q Did you see the coat hung on the nail there? A Yes

CASE # 1508

sir.

Q And did you see the defendant sit down on the seat in booth No. One? A Yes sir.

Q State if you saw how far that coat, when it was hung on the nail, hung down? A Yes sir.

Q How far did it hang down, so far as the paper box was concerned? A It touched the paper box.

Q Did it go below the middle, or how? A Just about the edge of it, hung over the box.

Q Did you see the defendant place his face near the partition between No. One and No. Two? Did you see the defendant place his face down near the partition between number One and No. Two and between the paper box and the back wall? A Yes sir.

Q Did you see that? A Yes sir.

Q And where were you standing at that time? A Where was I sitting?

Q Where were you standing? A Where the door was.

Q Standing inside of where the door was? A Yes sir.

Q From where you were standing, when he had his face in that position, could you see his face? A No sir.

Q Why not? A The coat would hide it, the coat and the paper box.

Q Did you go, on the 9th of February, with Mr. James Weikly and Mr. Mahoney and climb up a ladder on the outside

CASE # 1508

of that toilet room, and try to look into that window? A Yes sir.

Q And what did you see? A I got up on the ladder and looked in that window and Mr. Weikly stood up, and I could just see his head when he stood up and when he sat down I could not see it.

Q Could not see him when he was sitting down? A Yes sir.

Q What was the condition of the window at that time? Was it bright, clear? A Well, just medium.

Q There was no door shut on the toilet at the time you went there, last Sunday? A No sir.

Q There was a screen in its place? A Yes sir.

MR. TALIAFERRO: That is all.

THE COURT: Any cross examination?

MR. McCORMICK: That is all.

THE COURT: Gentlemen of the jury, you are admonished not to converse among yourselves on any subject connected with this trial, or form or express any opinion thereon, until the same is submitted to you. The Court stands adjourned until tomorrow morning at half past ten.

(The Court accordingly took a recess until tomorrow, Wednesday, March 20th, 1912, at 10:30 A. M.)

CASE #1508

THE PEOPLE, &c against GEORGE WALLIS.

New York, Wednesday, March 20th, 1912.

TRIAL CONTINUED.

CHARLES W. HOOD, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your full name? A Charles W. Hood.

Q Where do you live? A 220 Ege Avenue, Jersey City.

Q How old are you, Mr. Hood? A Seventy years old.

Q What? A seventy.

Q And how long have you been residing where you reside now? A About four years.

Q Are you acquainted with James Weikly and his son George, the defendant? A I am.

Q How long have you known them? A I have known James Weikly--

MR. MCCORMACK: I object to that. The question is whether he knows the defendant.

THE COURT: Yes; how long have you known the defendant.

Q How long have you known the defendant? A Probably five years.

Q And how far do you live from where he lives at this time? A A block and a half, about.

Q Are you a man of family yourself? A I am.

CASE #1508

Q Wife and children?

MR. MCCORMICK: Objected to as immaterial and irrelevant.

A Wife and six children.

MR. MCCORMICK: Do not answer when I make an objection.

THE COURT: I will allow it.

Q Is your family acquainted with Mr. Weikly's family?

MR. MCCORMICK: I object to that.

THE COURT: Objection sustained. You may ask whether his family knew the defendant. Do the members of your family know this defendant?

THE WITNESS: I don't think they do. My family are married and away.

Q Do you know the general character for morals of the defendant in the community in which he lives?

MR. MCCORMICK: I object to that. He has not shown that this man knows any man who knows the defendant.

THE COURT: Well, I don't know. He says he knows the father of the defendant.

Q Do you know the general character of the defendant in the neighborhood in which he lives for morality? A I think I do.

Q Is it good or bad? A It is good, always has been.

BY THE COURT:

Q About your own people do you know who also know this

CASE # 1508

defendant? A I know everybody in the neighborhood, probably.

MR. McCORMICK: That is not responsive.

Q About how many do you know who also know this defendant? A That is a hard question. It might be fifty.

Q Are you able to mention? A I don't know as I could name fifty in the whole surrounding neighborhood who know him.

THE COURT: You have answered it.

MR. TALLIACENRO: That is all.

MR. McCORMICK: That is all.

GEORGE W. NECKER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TALLIACENRO:

Q What is your full name? A George W. Necker.

Q Where do you live? A 18 Clark Avenue, Jersey City.

Q How old are you? A Fifty six.

Q What is your business? A Coal business.

Q Coal business? A Yes, sir.

Q Are you a man of family? A Yes, sir.

Q Are you personally acquainted with the defendant, George Weikly? A Yes, sir.

Q How far do you live from him? A Oh, about-- I live No. 18 Clark, and I think he lives at 28, the same street.

Q About how far? A About ten doors.

CASE 1508

Q Which? A About ten doors.

Q And do you know his general character for morality in the community in which he lives?

MR. MCCORMICK: Reputation, I object.

Q Well, reputation? A Yes, sir.

Q Is it good or bad? A Good.

MR. TALIAFERRO: That is all.

MR. MCCORMICK: That is all.

MR. TALIAFERRO: I have four witnesses; I don't know whether they are here or not.

MR. MCCORMICK: I will concede that four witnesses will testify that the defendant is a man of good reputation.

MR. TALIAFERRO: I mean George Muller.

MR. MCCORMICK: Well, George Muller.

THE COURT: Do you want to give their names?

MR. MCCORMICK: I don't think that such evidence is competent.

MR. TALIAFERRO: A concession of that kind is not what I am entitled to. I am not willing to let it go on the concession of the District Attorney.

THE COURT: Very well, call your witnesses.

MR. TALIAFERRO: They are not here, but will be here in a short time, and entirely as to character.

THE COURT: Well, what is your suggestion?

MR. TALIAFERRO: Yes?

8091
CASE 1508

THE COURT: What do you want me to do? Wait for them?

MR. TALLIAPETRO: I want your honor to allow me to introduce them when they come, if the case is not closed.

MR. MAGONIS: I think that is all right.
The case is closed.

THE COURT: If there is no objection by the district attorney, I will call the witnesses.

MR. TALLIAPETRO: One minute, I omitted something.
There are two other witnesses here.

MR. TALLIAPETRO: F. P. BOLAND, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TALLIAPETRO:

Q What is your full name? A Francis P. Boland.

Q Where do you live? A 48 Skillman Avenue, Jersey City.

Q How old are you? A Twenty seven.

Q What business are you engaged in? A I am baggage master between New York and Philadelphia for the Pennsylvania Railroad.

Q Are you personally acquainted with the defendant, George Muller? A No, sir.

CASE #1508

Q I mean, how recently? A Yes, sir.

Q Now you have known him for about three years.

Q Is he known in the community for morality in

the neighborhood of where he lives?

A Yes, sir.

Q Is he known in the community for morality in

the neighborhood of where he lives?

A Yes, sir.

Q Is he known in the community for morality in

the neighborhood of where he lives?

A Yes, sir.

Q Now, the question whether he

is known in the community, it is a question of

reputation, is it not?

THE COURT: Yes, I will let him answer that

question. You may ask him whether he is associated

with other people who are of good repute.

Q Do you know other people who know George Weirly, the

defendant? A Yes, sir.

Q Well, about how many? A I might say several hundred

who know him.

Q And do you know his general reputation in the commu-

nity in which he lives for morality? A I do, sir.

Q Is it good or bad? A It is good.

Q In the discharge of your duties, have you been associ-

8051
CASE

ated with him, the defendant, is he a friend? A Yes, I have.

Q Have you ever seen him?

MR. PROSECUTOR: I have seen him.

MR. PROSECUTOR: I have seen him.

Q Have you ever seen him in the same place with him?

MR. PROSECUTOR: I have seen him.

THE COURT: The witness is excused.

MR. PROSECUTOR: I have seen him, and you this witness.

Q Have you ever seen him in the same place with him, have

you ever seen him in the same place with him?

MR. PROSECUTOR: I have seen him.

MR. PROSECUTOR: I have seen him.

Q Have you ever seen him in the same place with him. That will

be all.

MR. PROSECUTOR: That is all.

Q Do you know or is anyone charged with having com-
mitted a crime against nature, sodomy? A Yes, sir, I have
heard him say.

MR. PROSECUTOR: That is all.

THE COURT: JAMES H. SCHUMWAY, called as a witness on
behalf of the defendant, being first duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. PROSECUTOR:

Q What is your full name? A James H. Schumway.

Q Where do you live? A 62 Tommelly Avenue, Jersey

CASE # 1508

City.

Q Are you personally acquainted with the defendant, George Weikly? A Yes, sir.

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

Q How old are you? A Thirty.

Q And what business are you engaged in? A Passenger

Train man of the Pennsylvania Railroad, passenger brakeman.

Q Do you know other people in the neighborhood in which

George Weikly lived? A Yes, sir.

Q How many? A Well, I would judge two or three,

and I don't know their names. I don't know where they live.

Q Now, you

Mr. McCORMACK: Just answer the question.

THE WITNESS: Yes, sir.

MR. McCORMACK: Just answer the question.

Q Do you know of any organization in the community in which he lives for morality? A Yes, sir.

Q Is it good or bad? A Good, as good as could be.

Q Have you been associated with him day and night on the Pennsylvania Railroad? A Yes, sir.

MR. McCORMACK: I object to that.

THE COURT: I will allow that.

THE WITNESS: Yes, sir.

Q Have you ever slept in the same bed with him?

MR. McCORMACK: I object to that.

THE COURT: The objection is sustained.

CASE 1508

MR. TALIAFERRO: I take an exception.

Q Have you slept in the same bed with him in the last two or three years? A Yes, sir.

MR. McCORMICK: I object. I object to the witness answering when he knows I am about to make an objection.

THE COURT: Objection sustained. His answer is stricken out. The objection is noted, and sustained, and an exception noted.

Q I will ask the same question, if he has ever approached you for any immoral purposes?

MR. McCORMICK: Objected to.

THE COURT: Objection sustained.

MR. TALIAFERRO: Exception.

Q Or in any immoral way?

MR. McCORMICK: Objected to.

THE COURT: Objection sustained.

MR. TALIAFERRO: Exception. That is all.

CROSS EXAMINATION BY MR. McCORMICK:

Q Do you know that he is charged with having committed the crime of sodomy? A Yes, sir.

MR. McCORMICK: That is all.

MR. TALIAFERRO: The defendant closes, with the understanding we have the right to examine those four witnesses.

THE COURT: The understanding is, Colonel, you may call those witnesses with the same force and effect.

CASE # 1508

as though you called them now, and the People will have the right to make such objections to the reception of evidence from them as they could take if they were produced now.

MR. TALIAFERRO: With that understanding, if your Honor pleases, the defence closes. At this point, your Honor reserved decision upon a question of evidence. Does your Honor think it proper to decide that now, or at the close of the case?

THE COURT: I think I will strike out the evidence in question, and instruct the jury to disregard it. It is on the border line. It is, perhaps, conceivably proper, but I am inclined to think that I will strike it out.

MR. McDONALD: I don't understand what the motion is.

THE COURT: A motion is made, or, rather, a motion was made to strike out certain evidence. The substance of the evidence was an alleged conversation, or a conversation between this defendant and a certain person who was one of a panel of jurors in another part of this court on a previous occasion, and I reserved decision on that motion. While there is something to be said in favor of the admissibility of that evidence, there is something to be said against its admissibility. It being evidence of a doubtful character, I have concluded to strike it out. I do strike it out, and I tell you,

CASE # 1508

gentlemen of the jury, to disregard it.

THE FIFTH JUROR: If your Honor pleases, I would like to know the distance, in inches, from the lower edge of that hole that was in the partition to the floor.

THE COURT: You would like to have a certain fitness recalled?

MR. MCCORMICK: The diagram shows it.

THE COURT: The diagram shows it?

MR. MCCORMICK: I think so. There are measurements on that diagram, Exhibit 5 (handing same to jury).

THE COURT: Exhibit 5 is shown to the jury in response to the request of the jury for information on a certain point.

(Mr. Maliaferro speaks to jury relative to People's Exhibit 5)

MR. MCCORMICK: I think everything should go on the record.

THE FIFTH JUROR: Your Honor, what I would like to know is the distance in inches. It is not marked out there.

THE COURT: I didn't hear your original question. What is it you would like to know?

THE FIFTH JUROR: I would like to know the distance in inches from the edge of that hole that was in the partition to the floor.

THE COURT: You would like to know the distance in

CASE 1508

inches from the edge of the hole in the partition between booths 1 and 2 to the floor?

THE FIFTH JUDGE: Yes, sir, to the floor.

THE COURT: Col. Taliferro, is that shown on the exhibit?

MR. TALIAFERRO: Ours shows it.

MR. MCCORMICK: I might say that People's Exhibit No. 5 shows that, from the floor to the bottom of the larger hole which was cut out afterwards is a distance of two feet three and three-quarters inches.

THE COURT: That is to say, as I understand it, the hole in the partition between booths 1 and 2 was enlarged?

MR. MCCORMICK: Yes, sir.

THE COURT: And, as enlarged the bottom of the hole is two feet and--

MR. MCCORMICK: Two feet three and three-quarter inches.

THE COURT: From the floor?

MR. MCCORMICK: From the floor.

THE COURT: That does not purport to give the distance from the bottom of that hole as the hole existed on the 24th of August?

MR. MCCORMICK: It does not, but People's Exhibit no. 5 shows the additional distance, which, when added to the two feet three and three-quarter inches gives the distance from the floor to the bottom of the hole.

CASE #1508

MR. TALIAFERRO: That is correct, except I am not quite sure as to your distance. Two feet six and one half inches to the tin? Is that what you stated?

MR. MCCORMICK: I didn't say anything about tin. I don't know anything about it.

MR. TALIAFERRO: The tin that did cover the hole is what I am speaking of.

MR. MCCORMICK: Nor do I know which is the top of this exhibit. I will have to recall a witness.

THE COURT: What you mean is that, taking a dimension as given, and adding to that dimension the size of the hole as shown there, should be the maximum possible distance that the hole was from the floor on the 24th of August.

MR. MCCORMICK: No, I mean that the dimension given in the diagram, two feet three and three-quarter inches, when you add to that the distance from the bottom of this board, People's Exhibit No. 2, whichever may be the bottom, the distance from the bottom to the hole would give the total distance.

Q Is the hole as contained in People's Exhibit No. 2, the hole that was in that partition on August 24th?

MR. MCCORMICK: It is.

THE COURT: Is that hole somewhat enlarged?

MR. MCCORMICK: This is the same hole.

THE COURT: Is that hole to now found in Exhibit 2

8061
CASE 1508

the same size that the hole was on August 24th?

MR. MCCORMICK: Yes, sir, according to the testimony.

THE COURT: Then you have got to add to two feet two and three-quarters inches the distance from the bottom of Exhibit 2 to the bottom of the hole?

MR. MCCORMICK: Yes, sir.

THE COURT: Only you can't tell, as you hold it there, which is the top or bottom?

MR. MCCORMICK: I cannot.

THE COURT: So it has to be measured from both ends?

MR. MCCORMICK: Three and three-quarters inches on one end.

MR. TALLIAPERO: I don't understand what this means.

MR. MCCORMICK: And five and one half inches from the other end.

MR. TALLIAPERO: The District Attorney is testifying in this case.

THE COURT: Now, I think the effort is to make it plain to the jury, and I think when the Colonel understands he will see there is no difficulty about it. A certain dimension is shown upon a diagram. That dimension is two feet three and three-quarter inches.

8091
CASE 1508

Q. Now, the distance is two feet three and three quarter inches.

A. Now, to start over again. On certain exhibit, the distance is stated to be two feet three and three quarter inches or the distance from the floor of the toilet to a space in the partition cut out by the removal of the square of wood which is People's Exhibit 2. That square of wood is the hole testified to as having existed in the partition between Booths One and Two on August 24th. To ascertain the height of the bottom of that hole from the floor, it being now unknown which part of the square board in court represented the side nearest the floor, the dimensions on either side of that hole must be taken. If taken on one side, you add to two feet three and three quarter inches, three inches and three quarters of an inch. If taken from the other side you add to two feet three and three quarter inches five inches and a half. Now, we will proceed. Call your witness.

EXHIBIT 2 TESTIMONY.

JOHN A. HARRIS called as a witness on behalf of the People, in capital, being first duly sworn, testified as follows:

Q. Now, the distance is two feet three and three quarter inches.

CASE # 1508

3 '89

Q Where do you live? A Highland Park, New Jersey.

Q What is your business? A Clerk for the captain of police, Pennsylvania Railroad.

Q How long have you held that position? A Since August 4th, 1908.

Q Were you in a room in the toilet room, mens' toilet room, adjoining the smoking room of the ferry house of the Pennsylvania Railroad at Cortlandt Street on the 24th or 25th of August, 1911. A I was.

MR. TALIAFERRO: I object to that, if your Honor pleases. I suggest that your Honor reserve the ruling upon that objection until the next question is asked.

THE COURT: Very well.

Q Did you see any hole in the ceiling of that toilet, or toilets?

MR. TALIAFERRO: I object. If your Honor please, that matter has all been gone over carefully, and was a part of the State's case. They even went so far as to bring a carpenter here whom they say bored that hole.

THE COURT: Your objection is that it was part of the People's direct case?

MR. TALIAFERRO: Undoubtedly, and I go further than that. I say to your Honor this: It is right that I should state it. We have discharged a large number of our witnesses, and the defendant is unable to go any further with procuring witnesses in rebuttal to this

8051
CASE 1508

evidence, and where would the end be to it? If they are allowed to put witnesses on the stand after they have closed their case, to make out a case in chief--

THE COURT: -I think you are right, I will sustain the objection.

MR. MCCORMICK: I have ten or eleven witnesses here to give that same testimony.

THE COURT: I will allow you to introduce any evidence that is properly in rebuttal.

MR. TALIAFERRO: I object to the statement that he has ten or eleven witnesses here.

THE COURT: The jury will disregard it.

MR. MCCORMICK: It is a matter entirely within the discretion of the court whether or not such testimony will be admitted.

THE COURT: I think so; I think it is entirely in the discretion of the Court, and, in the exercise of that discretion, it is excluded.

MR. MCCORMICK: It seems to me the defence having picked out that one link in the prosecution's case, and having concentrated their entire weight on it, and having brought here a lot of witnesses who plainly committed the rankest kind of perjury, that the people should have an opportunity to show there were two holes there, instead of one.

CASE # 1508

THE COURT: I am strongly inclined, in the light of your statement, to withdraw a juror in this case, but I will not.

MR. TALIAFERRO: I ask your Honor to-- I don't want a juror withdrawn--

THE COURT: No, I won't allow that testimony.

MR. MCCORMICK: That is all.

WALTER J. DUNN, called as a witness in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q Did you have a conversation with the father of the defendant? A A man who said he was his father.

MR. TALIAFERRO: One minute. I don't remember that the time and place is said.

MR. MCCORMICK: I will fix the time and place if you will give me a chance.

Q Did you have a conversation with the father of this defendant? A A man who said he was his father.

Q Well, the man who testified as his father in this trial? A I didn't hear him testify to it.

THE COURT: He can be brought in, if there is any question about it.

MR. TALIAFERRO: One moment; if your Honor pleases. If it is in regard to a conversation that occurred in the Perry house--

CASE 1508

THE COURT: I don't purpose to rule upon it now, counsel. Not enough has been disclosed to enable me to rule.

Q Is that the man (indicating James Weikly). A Yes, sir.

THE COURT: For the purposes of the record, it will appear that the person coming in the room and identified by the witness as James Weikly, who has testified that he is the father of the defendant.

Q When did you see him? A This was on the 25th day of August.

Q What time of day? A In the afternoon.

Q Where was he at that time? A In my office, and in the hallway.

Q Where did you see him first? A In my office.

Q What did he say to you?

A He said: I object to that, in your honor's presence.

THE COURT: The objection is overruled.

MR. TALIATERRO: Will your honor allow me to call your attention to this fact? I asked him the question if in that conversation he did not go state?

THE COURT: I remember the evidence. I recollect not merely his but the ~~extraneous~~ evidence of the witness referred to. I will allow this witness to be interrogated respecting those matters brought out in the testimony of the witness produced by the defendant and testified to by this witness when originally called.

CASE #1508

MR. TALLIAPETRO: I note an exception.

THE COURT: Continue it to that.

Q What was it? A Mr. Kelly came in my office, in the afternoon of August 23rd, and represented himself to be --

THE COURT: You are directing the attention of this witness to a detail which was a matter brought out by other witnesses in his alleged conversation with the witness.

MR. TALLIAPETRO: I have to state out that answer, if you please.

THE COURT: I will strike it out. Start again.

MR. TALLIAPETRO: As to who he represented himself

Q Did you ask him what his name was? A Yes, the condition of the ceiling. A I went over with him and showed him the hole in the ceiling.

Q Did you point out anything in the ceiling to him?

MR. TALLIAPETRO: One minute; I object to that, if you please.

THE COURT: The objection is overruled, sir.

MR. TALLIAPETRO: For that reason -- will your Honor

THE COURT: I will hear you.

MR. TALLIAPETRO: I asked Captain Dunn if he did not know where James Weikie the one hole in the ceiling.

CASE #1508

he answered then that he did not. Now, this is simply a repetition of that evidence.

THE COURT: I think the People have a right to examine him, in the light of the testimony as given by the defendant's father. I will allow it.

MR. TALIAFERRO: I take an exception.

Q What did he say? A I pointed out this-- showed him the holes in the ceiling, showed him the broken window-- told him--

MR. TALIAFERRO: I object to the evidence as to the window, too, and except to your Honor's ruling on that.

THE COURT: The objection is overruled. You have an exception.

A (Continuing) Told him we had two men looking through those holes; I was looking through that window--

THE COURT: Direct his attention now specifically to anything brought out.

Q Did you or did he say anything about Carney? A About Carney?

Q Yes. A Yes, I told him that Carney opened the door and caught him in the act. I explained everything to him when he asked me.

MR. TALIAFERRO: Objected to.

THE COURT: Strike out "I explained everything to him, " and the jury will disregard it. You simply answered the question, sir.

CASE # 1508

Q. What did he say then? ★

MR. TAGLIAFERRO: I object to that. I object to any evidence--

THE COURT: I understand your objection, counsel, I take it. The objection is overruled.

MR. TAGLIAFERRO: I take an exception.

A. After I had explained everything to him and showed him the picture of the man, "Oh God, why--"

MR. TAGLIAFERRO: Objected to.

THE COURT: That is stricken out and the jury will disregard it. Now were you told before. Don't you want to direct the jury's attention specifically to what the witness Weikly not embraced by the picture of this witness when he was originally introduced to him, or any interrogate him regarding that, as you are licensed to that.

MR. TAGLIAFERRO: I agree with you on that.

THE COURT: When this witness was on the stand and he was not permitted to testify to any conversation that he had with the father of the defendant. The father of the defendant took the stand and testified at length regarding his conversations with this witness, and I am going to direct his attention particularly to the various things that the father testified to, that I can ask in the general question as to the conversations he had with the father.

CASE 1508

complaint to witness)? A I saw him sign a document of that kind.

MR. McCOMBICK: I offer the document in evidence.

MR. TALLIAPETRO: I object to that if your Honor please, upon the ground that it is irrelevant, immaterial and incompetent, and upon the ground that the ground has not been laid properly as the law requires for the introduction of such evidence.

THE COURT: I will look at the paper.

(Court examines paper). I will receive that sheet, the other sheet of the name of the defendant who is on the sheet.

MR. TALLIAPETRO: That one sheet?

THE COURT: I will receive that sheet.

MR. TALLIAPETRO: That sheet is received in evidence and marked Exhibit No. 7 of this date.)

MR. TALLIAPETRO: Your Honor, then, overrules my objection?

THE COURT: Yes.

MR. TALLIAPETRO: I take an exception.

Q Was this signed? A In the Clerk's office of the Magistrate's Court.

Q Was it before he signed this statement, before or after before the Magistrate or after? A Before.

Q He signed this statement first? A He went in the Magistrate's Court when this complaint was drawn up, and he

CASE # 1508

signed it.

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

MR. MCCORMICK: I consent.

THE COURT: Strike it out and pay attention to the question.

Q Did he go before the Magistrate first, or did he sign this paper first? A He signed it at paper first.

Q And this was signed in the clerk's office? A Yes, sir.

Q And after that he went in before the Magistrate, in the court room? A Yes, sir.

MR. MCCORMICK: (Reading) First Division. City Magistrate's Court, First Department, City and County of New York, the said defendant being duly examined before the Magistrate, according to the law on the annexed charges, and being informed that it is his right to make a statement in relation to the charges against him, that the statement is designed to enable him, if he see fit to answer the charge, and explain the facts alleged against him, that he is at liberty to waive ~~tax~~ making a statement and that his waiver cannot be used against him at the trial. Q What is your name? A George [redacted] Q How old are you? A 20 years. Q Where were you born? A United States. Q How long have you lived there? A Ten to or five, and [redacted] Q Where have you resided there? A Jersey City, New Jersey. Q How long? A Two years. Q What is your business?

CASE #1508

A Brakeman. Q Give any explanation you may think proper in the circumstances appearing in the testimony against you and state any facts which you think will tend to your exculpation? A I am not guilty." Signed, "George Wallis." "Taken before me this 25th day of August, 1911." Signed, "J. Vorrigan, City Magistrate".

Q Now, after he signed that, were you in the Magistrate's- Did you go before the Magistrate with him? A I was in the Magistrate's Court when he was arraigned.

Q And was he brought up before the Magistrate? Was he arraigned there? A Yes, sir.

Q Who else was there? A Well, there were a whole lot of people in the court.

Q Here these two defendants in front of the magistrate at the time? A Yes, sir.

Q Did the magistrate ask these two defendants any questions? Just "No" or "Yes".

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

THE COURT: I will allow him to answer yes or no.

MR. TALLAFERRO: Exception.

A Yes, sir.

Q Was there a stenographer there? A Yes, sir.

MR. TALLAFERRO: One minute. I object to that as wholly immaterial.

THE COURT: I will allow him to answer "Yes" or

CASE #1508

MR. TALIAFERRO: Wholly immaterial and a conclusion.

THE COURT: Objection overruled.

MR. TALIAFERRO: I take an exception.

A Yes, sir.

Q How many witnesses against the defendants testified before the magistrate?

THE COURT: I think that is immaterial.

MR. MCCORMICK: Well, I will withdraw that.

MR. TALIAFERRO: Let him answer that.

MR. MCCORMICK: I have withdrawn the question. It don't make any difference.

Q Did you hear these two defendants make any statement to the magistrate?

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

MR. MCCORMICK: Just "No" or "Yes."

THE COURT: I will allow him to answer "yes" or "No".

MR. TALIAFERRO: Yes, sir.

Q Which of the two defendants was the first one that the magistrate questioned? A Muller.

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

THE COURT: I will allow the answer to stand.

Q Now, captain, last night around six o'clock, were you in the toilet room above the toilet on the ground floor

CASE # 1508

of the Pennsylvania station at Cortlandt Street? A Yes, sir.

MR. TALIAPFERRO: I object to that as being wholly immaterial, and having been gone over by this witness when on the stand before.

THE COURT: I will allow the answer to stand.

Q What did you do there? ~~what~~ Was there a photographer there? A There was.

Q Did you take a photograph? A Yes, sir.

MR. TALIAPFERRO: When was this? Last night?

MR. MCCORMICK: Last night.

MR. TALIAPFERRO: I object to that, if your Honor pleases, this is opening up the People's case from the beginning. Where are we to end? It is evidence in chief entirely.

MR. MCCORMICK: If your Honor pleases, they have proposed that I claim to be a false diagram.

THE COURT: What is that?

MR. MCCORMICK: What I claim to be an indirect diagram, and in order that the jury may understand the exact situation there, I desire to put this evidence in.

THE COURT: I will let you interrogate the witness. I will rule upon no general proposition. You ask him a question, and I will determine whether I will let him answer it or not.

Q Was a photograph taken there?

MR. TALIAPFERRO: One minute, if your Honor pleases,

CASE # 1508

they have introduced their diagram here, taken a few days ago, in chief.

THE COURT: I may as well say to you now, Colonel, if they have any other diagrams provided they are properly proved, I will let them in.

MR. TALIAFERRO: You let him answer.

THE COURT: Yes.

Q What was done? A The photographer took a picture through the hole into the toilets.

Q Did you see him take it? A I did.

MR. TALIAFERRO: That is not a diagram, if your Honor please; that goes to the existence of the hole, and whether you can see through the hole, which was gone through at great length upon the examination of this witness on the people's case. We might say we can go back and rebut this evidence--

THE COURT: You have introduced certain evidence bearing upon what you claim to be the conditions there.

MR. TALIAFERRO: Yes, sir.

THE COURT: And, among other things, testimony regarding a certain piece of wood said to have been close to one of the holes, and that was new evidence introduced by you, and as to that I will allow the testimony.

MR. TALIAFERRO: I think your Honor is right as to that point, yes.

THE COURT: Now was it that you wanted to introduce that?

CASE #1508

of the boy first? A To the toilet house?

Q Yes. A On the 25th of August.

Q What day of the week was that? A I thought it was
on Friday.

Q Were there two holes in the ceiling at that time?

A Yes, sir.

Q When the father went there did you show him those
two holes? A I did.

MR. TALIAFERRO: I object to that. Your Honor has
already ruled upon it, as I understand it. I asked this
witness, when he was on the stand, if he did not point
to that ceiling, and if there was only one hole there, ~~when~~
when he pointed, and he said he did not. It was all
gone over carefully.

THE COURT: I will allow the answer to stand.

~~XX~~ MR. TALIAFERRO: Exception.

Q Was there any change made in that ceiling on Friday
or on Saturday?

MR. TALIAFERRO: I object to that, if your Honor
pleases. I don't know where this is to end. We are
certainly at a very great disadvantage if this evidence
is to be allowed. It was all gone over, every bit of it.
He said before when he was on the witness stand no change
was made, or what changes were made--

THE COURT: Objection sustained.

MR. TALIAFERRO: Is there any objection to this pho-

CASE 1508

tograph going in evidence?

CROSS EXAMINATION BY MR. TALIAFERRO:

Q. Captain Dunn, how many witnesses were examined before the magistrate? A As I recall Mr. Carney was examined a little.

Q. Anybody else? A No.

Q. Any one else? A No.

Q. You were there and Nutter was there and Bangs was there, were you? A Yes, sir.

Q. All three were there? A Yes, sir, four of us.

H A R O L D L . C O E , called as a witness on behalf of the People, in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMICK:

Q. What is your full name? A Harold L. Coe.

Q. Where do you live? A 681 Broadway.

Q. Between five and seven o'clock last night did you visit the toilet room adjoining the smoking room of the Pennsylvania ferry house in Cortlandt Street, this county?
A I did.

Q. Did you go in the room directly over that room also?
A I did.

Q. When you went in the room directly over the toilet room, what did you do?

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

CASE # 1508

~~and~~ for this reason. The proof shows that these two holes have been sawed out of that ceiling, and the proof shows that this occurrence took place after dark, and not between five and six or four and five o'clock. The photograph was taken in the broad open daylight, and when this occurrence took place--

THE COURT: It bears on the question whether there was a physical object in the nature of a piece of wood, partially obstructing the view through one of the holes, a condition which would be the same irrespective of any condition of light. I will receive it for that purpose.

MR. TALIAFERRO: Will your Honor allow me one other suggestion. I submit to your Honor it does not bear on that proposition for this reason: That at the time of ~~ix~~ this occurrence the holes were there, and only one hole an inch and an eighth in size. Consequently, the only way that testimony would be admissible would have been to take the photograph that hole was made alongside of the cross piece three by four inches. Now, he comes and shows a photograph taken through a hole 12 by 12 inches.

THE COURT: I will allow it, as bearing upon the location of the cross piece.

MR. TALIAFERRO: I don't see how it can bear on it at all possibly; I except.

THE COURT: They have got to show that the cross piece now as indicated in the photograph was in the same

CASE 1508

location it was on August 24th. Showing that I will allow it.

MR. TALIAFERRO: Even so, that would not obviate the necessity of fixing the point of vision over the hole which is alongside the cross piece.

THE COURT: You have produced a certain witness here who has given certain testimony, and the credence to be attached to that evidence is for the jury, and, as bearing upon his reliability as a witness, this evidence is allowed.

MR. TALIAFERRO: I except.

Q What did you do upstairs? A I examined the flooring and placed my camera over a hole which I found over the two toilets nearest the river side, and made a photograph looking through this hole, showing the toilet on the floor below. The lens was placed from 11 to 12 inches above the flooring, the level of the floor of the room above, and I made a picture then looking down. I made two pictures looking through.

Q At what hour was that photograph taken? A They were taken between six and seven.

Q Was there any artificial light used? A There was.

Q What? A There was two gas mantle lamps burning in the toilet. One between the two toilets, and I also used a flash.

Q Where was the flash made? A The flash was made in the lower toilets, and also a little bit above.

CASE 1508

Q Did you take that photograph (handing same to witness)?

A I did; this is one of them.

Q And is that a truthful representation of the conditions there? A It is.

Q It is an accurate photograph? A It is an accurate photograph; shows the hole, the flooring, the toilets, and the division between the two toilets.

Q That is it shows the cement floor in the room above?

A Yes, sir.

Q And it shows the partition between the two toilets?

A Yes, sir.

Q And it shows the toilet? A Yes, shows the full bowl of both toilets, and the partition.

MR. MCCORMICK: I offer the photograph in evidence.

MR. TALIAFERRO: Let me see it.

(Mr. McCormick hands photograph to Mr. Taliaferro.)

Q Was there a man in the lower toilet at the time?

A There was. I don't know the name. It was one of the men with you at the time.

Q What was he doing? A We had a piece of tissue paper stuck through an opening, half way through, which shows on the picture.

MR. MCCORMICK: I offer the photograph in evidence.

MR. TALIAFERRO: May I ask a question?

THE COURT: Certainly.

CASE # 1508

GROSS EXAMINATION OF MR. TALLIAPETRO:

Q Was it broad, open daylight? A No, I didn't get there until about five or to six.

Q And was it daylight? A No, it was just dusk.

Q What time? A About a quarter to six when I arrived in there, but the light was not till after six.

Q What time did the photograph of the thing was not made

until after six o'clock.

Q Now, the first photograph? A The first one, I should say, was taken at six ten, and the second one about ten minutes or so later.

Q Now, what time did you get yesterday afternoon? A About five thirty.

Q Yes, today? A I was around that time.

Q What is the size of the hole in the cement through which you took the photograph? A About eight or nine inches, more or less.

Q A larger than that? A No, I don't think so.

Q Could it not have been twelve inches by five, or by 12 inches?

MR. MCCORMICK: You didn't measure?

THE WITNESS: I didn't measure it. I should say about ten inches square.

Q And what was the size of the hole in the ceiling above the toilet? A It was about the same size.

Q About the same size? A Yes, sir.

CASE #1508

Q Did you place your camera in the centre of that hole?

A Yes, sir.

Q Right in the centre? A Yes, sir.

MR. TALLAFERRO: Then I move to exclude it, if your Honor please.

BY THE COURT:

Q I want you to pay careful attention to me now, and if you don't understand, you just say so? A Yes, sir.

Q There was a hole in the cement? A In the cement floor, yes, sir.

Q Then there was a place cut out of the wooden portion forming the ceiling, the toilets? A Yes, sir. about

Q Was the hole in the wooden part/as large as the hole in the cement? A Yes, sir, about, just about the same size, it may be -- may have been a trifle smaller. It was practically the same size.

Q Hold that exhibit in your hand (handing witness People's Exhibit No. 3). Now, the hole that you saw in the wood, was that the size of those holes that are in that wood there?

A No. It was the size of the whole piece of wood that I hold in my hand.

THE COURT: Let me see the picture.

(Mr. McCormick hands photograph to the Court).

MR. TALLAFERRO: I want to call your Honor's attention--

THE COURT: No, you need not. I will look at this.

CASE # 1508

MR. TALLANTIRE: The suggestion I wish to make, I think is very pertinent.

THE COURT: Very well, I will hear you.

MR. TALLANTIRE: The lens, according to this witness, was placed between these two holes; consequently it could not be a presentation of anything that existed on that day, according to the photographer's own evidence, and that is what I intend to prove.

THE COURT: I will admit it in a moment. I want to give the witness a chance. The only question is whether the condition is sufficiently similar to make the evidence of value to the jury.

MR. TALLANTIRE: If your honor please, I will settle this objection; I will not draw the objection.

THE COURT: You withdraw the objection?

MR. TALLANTIRE: I withdraw the objection. Let the photograph in.

THE COURT: Well, as the objection is withdrawn, the photograph will be received without objection.

(Received in evidence and marked People Exhibit No. 3, of this date).

BY MR. McCORMICK:

Q You have testified to two photographs? A Yes, sir.

Q Now, the one that you have already looked at, was that the first or the second? A That was the first.

MR. McCORMICK: And the other, I offer that in evi-

CASE # 1508

Q The second was made with the lens

A Yes, the same lens shown in the photograph that
was taken from the camera, the lens in the
camera was the same lens that was used to take the
photograph.

Q Is there any other evidence offered in this evidence.

A Yes, the same lens, the same lens, that is the
lens that was used to take the photograph.

Q Is there any other evidence offered in this evidence.
in evidence.

A Yes, the same lens, the same lens, that is the
lens that was used to take the photograph.

Q CLIFTON, called as witness
on behalf of the People, being first duly sworn, testified
as follows:

BY MR. McCORMICK:

Q What is your name? A Charles C. Clifton.

Q Where do you live? A 333 West 34th Street.

Q What is your business? A I am a stenographer.

Q What court were you in on the 25th of August, 1911?

A Supreme Court, First Division.

CASE #1508

Q That is in this building? A Yes, sir.

Q What magistrate was there that day? A Magistrate Corrigan.

Q Did you take down in shorthand the minutes of the case of the People of the State of New York on the complaint of Thomas J. Larney against George Wallis and George N. Muller?

A Yes, sir.

Q Are you able to state without refreshing your recollection, what took place upon that occasion? A No, I am not.

Q In the way of language between the Magistrate and the witnesses and the defendants? A Not without refreshing my recollection.

Q Have you anything with which you can refresh your recollection? A I have the book in which I took my notes.

Q Were they the original shorthand notes of that hearing? A Yes, sir.

Q Have you those notes with you? A Yes, sir.

Q I ask you to read the notes? A (Witness producing book) The entire case?

Q Yes.

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

THE COURT: I am disposed to rule in this way, regarding it, Colonel Taliaferro. I shall rule that, as matter of law this defendant here is not bound by any-

CASE # 1508

thing that Muller may have said in the Magistrate's court, for the reason that anything he may have said there was not said in the pursuit of a common purpose between him and the defendant Weikly, if there were any, but I am disposed to receive anything that Muller may have said in conflict with what he testified to here, if there be such thing as bearing on the credibility of Muller and the weight which the jury may conclude to attach to his testimony.

Q Proceed.

MR. TALIAFERRO: If your Honor please, I object to it on the ground it is incompetent, irrelevant and immaterial, and I object to it on the further ground that no proper legal ground has been laid for the introduction of this evidence.

THE COURT: My recollection is; if I am wrong you can correct me, as I have not read the stenographer's minutes of this trial-- that when Muller was a witness he was interrogated, among other things, as to what he said and what he did not say in the Magistrate's court, and I will receive the evidence of this witness as to what, in point of fact, he did say, if it is in conflict with what he has testified to here as bearing upon his credibility as a witness.

MR. TALIAFERRO: I desire to note an exception.

A "People ~~xxxxxx~~ on the complaint of Thomas

CASE #1508

J. Carney, against George Wallis and George N. Muller."

BY THE COURT:

Q. Now, is that an accurate transcript of what, in point of fact, was said in the court? Did you make, at that time that the words were spoken a true transcript in your book of that which was said? A Yes, sir.

Q. And is that the book that you have in your hand? A Yes, sir.

Q. Very well, go ahead? A "The Court: When the complainant has finished, you may say anything you wish to say. You are entitled to counsel. Anything you say may be used against you. Are you ready to go on? The defendants: Ready. Complaining witness sworn. Direct examination by the Court:"

THE COURT: No, I don't think we will hear what the complaining witness said.

MR. TATIANENKO: What did he say? Did he say, "The complaining witness being sworn?"

THE WITNESS: "Complaining witness sworn". That is the way I gave it in my notes.

THE COURT: I will allow this witness to read anything from his notes bearing upon what this defendant has said in the Magistrate's Court, or what defendant has said in the Magistrate's Court in so far as he has been interrogated on that subject on this trial.

Q. You are limited to that.

CASE # 1508

MR. MCCORMICK: But I submit it all relates to their answers. I mean, certain questions and certain statements were made just preceding the time they made certain answers.

THE COURT: In other words you say their answers are not intelligible if read alone?

MR. MCCORMICK: No.

THE COURT: We will hear them read first, and see how that is.

THE WITNESS: Just the part referring to the defendants, Judge?

THE COURT: You may read what this defendant Wallis said in the Magistrate's Court, and you may read what Muller said in the magistrate's court.

THE WITNESS: I am not prepared to swear that Wallis said this.

THE COURT: Then don't read it.

THE WITNESS: My notes call for "first defendant."

MR. MCCORMICK: I ask that he read what the first defendant said.

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

THE COURT:

Q Are you able to say what you mean by first defendant?

A Yes, sir.

CASE #1508

Q You mean by that in your notes the one of the two who in point of fact was interrogated first? A No, sir, I mean the first defendant in the line up.

Q You mean in point of fact, the one of the two who was first asked questions? A Yes, sir.

Q But you have now no present recollection, as to whether that person was Wallis, who is now on trial or whether that person was Muller; is that so? A That is so, your Honor.

Q And, therefore, you are unable to tell, by looking at your notes, whether the things which the first defendant, as you have described it in your notes, was said by Wallis or by Muller? A I am unable to state it, Judge, sufficiently, to swear to it.

THE COURT: Well, I think the defendant who is now on trial was likewise interrogated as to what he said in the Magistrate's Court?

MR. TALIAFERRO: The stenographer says that he does not know which it was.

THE COURT: I say I think, Colonel, that when this defendant was in the witness chair here, he was asked what he said in the magistrate's court?

MR. TALIAFERRO: Yes, sir.

THE COURT: And he made certain answers, and I think Muller was likewise asked.

MR. TALIAFERRO: Yes, sir.

THE COURT: And I think he made certain answers.

CASE # 1508

Haven't the People the right to introduce evidence going to the point that things were said there other than as testified to by the defendant or by Muller?

MR. TALIAFERRO: I agree with your Honor to this extent: That evidence might go as competent evidence to contradict Muller; not as any evidence of any confession on the part of this defendant whatsoever, because we don't know which one made the statement.

MR. MCCORMICK: But Dunn said that one of them was first.

THE COURT: I think it will be safe to receive it, with the instruction to the jury that it is not to be regarded as in the light of a confession or admission made by this defendant who is now on trial.

MR. TALIAFERRO: That is right.

THE COURT: Nor is it to be regarded in the light of a confession or admission as ~~xx~~ made by the defendant Muller but it is received as bearing on the credibility or credence which you may attach to Muller as a witness.

MR. TALIAFERRO: That is right.

BY MR. MCCORMICK: ~~Now~~

Q Now, will you read loud? A "Q By the Court: Do you want to say anything?"

MR. MCCORMICK: I understood your Honor to rule that the whole of it could go in?

THE COURT: I will hear first what appeared to have

CASE # 1508

been said by the defendant.

MR. TALIAFERRO: That ~~is~~ comes back to my proposition. The question has been asked here by the People's Counsel of the defendant if he did not say certain things in the Magistrate's Court. Now, it is competent in order to contradict the last witness, whether or not this defendant made that statement, naming what the statement was.

THE COURT: I understood your position to be that, with the limitation mentioned, you were willing that this evidence should be received. Do I misunderstand you?

MR. TALIAFERRO: No, your Honor did not misunderstand me. I fully agreed to that.

THE COURT: I understand that, with the limitation mentioned, you are willing that the testimony be received?

MR. TALIAFERRO: If it is competent at all, and put to the Court in the right light, but they have not got at it. They have no right to ask him to read off what took place there.

THE COURT: You do not want it read?

MR. TALIAFERRO: Certainly not.

THE COURT: Very well. I won't allow it to go in. I won't allow it to be read, for the reason that this witness is unable to state, Mr. McCormick, whether, in

CASE # 1508

point of fact, it was said by the defendant Muller, or whether it was said by the defendant who is on trial.

MR. McCORMICK: Yes, that is true, but, your Honor may not have heard Dunn testify, and I was careful to ~~bring~~ bring it out that one of the defendants was questioned by the court before the other, and he named that one, and I think he said Muller was questioned first, and Wallis second. If ~~that~~ that is so there is a perfect connection, and this witness' testimony becomes just as good as though--

THE COURT: What page does that appear on?

MR. McCORMICK: Mr. Stenographer, will you go back and read that?

(Stenographer reads as follows, from the testimony of witness Dunn, given about twenty minutes ago: "Q Were these two defendants in front of the magistrate at that time? A Yes, sir. Q Did the magistrate ask these two defendants any questions? Just no or yes? A Yes, sir. Q Which of the two defendants was the first that the magistrate questioned? A Muller.")

THE COURT: I think in the light of evidence which is now brought to my attention, going to the point that Muller was first interrogated, coupled with the testimony as given by the witness on the stand, I will allow him to read it being received merely as bearing upon the evidence to be attached to the evidence as given on

CASE # 1508

this trial of the witness Muller.

MR. TALIAFERRO: I except.

THE WITNESS: "By the Court: Do you want to say anything?

First defendant: It is the first time in my life I have been in a place like that".

MR. TALIAFERRO: I would like to follow you.

Where are you reading from?

MR. McCORMICK: Page 3, 10th line, or 9th line.

MR. TALIAFERRO: Why don't you read it all?

THE WITNESS: You just stopped me.

THE COURT: Go ahead.

THE WITNESS: "Q What ~~xx~~ ~~xxx~~ did you do it for? Answer, I don't know what made me do that. Question, Do you want to say anything? Other defendant? No, your Honor."

MR. McCORMICK: That is all. Will your Honor permit all of it to be read now, to show what they were talking about? Those answers don't really mean anything.

THE COURT: I will allow you to introduce ~~xxx~~ ~~xxxx~~ in evidence the complaint in the Magistrate's Court?

MR. TALIAFERRO: I now move to exclude the evidence of this witness upon the ground it is incompetent, irrelevant and immaterial, and especially upon the ground that no proper ground has been laid for the introduction of this evidence.

THE COURT: I overruled the objection.

MR. TALIAFERRO: Exception.

CASE #1508

THE COURT: Gentlemen of the jury, you are now pointedly and explicitly told that this defendant who is on trial is not bound by anything that was said in the Magistrate's Court by Muller, but that, when you retire, and consider what weight you will give to what Muller has said here, you may take into consideration the evidence as given by this last witness bearing upon what Muller said when in the Magistrate's Court.

MR. McCORMICK: Now, I ask to have the entire complaint, instead of the single sheet marked as the exhibit No. 7.

THE COURT: Let me see that complaint. You have got the second sheet in?

MR. McCORMICK: Yes, sir.

THE COURT: And I will receive the first sheet and the first sheet only, in addition to the second.

MR. TALIAFERRO: The first sheet is the complaint?

THE COURT: The first sheet is the complaint, and I receive that merely for the purpose of having on the record a brief explanation of ^{what} that which Muller said in the Magistrate's court related to.

MR. TALIAFERRO: And I object to the evidence of the complaint because it is incompetent, irrelevant and immaterial, and no ground has been laid for the introduction of it.

CASE # 1508

THE COURT: Well, I think, technically, you are right. There is no proper proof of the complaint, ~~and~~ if you insist upon that. Of course, the alternative is to prove that, in point of fact, the complaint was upon which the testimony was given.

MR. TALIAFERRO: Well, I except to your ruling on that.

THE COURT: You object to that properly, don't you?

MR. TALIAFERRO: I object to the evidence which has been laid for its introduction.

THE COURT: You have a question of materiality between that which has been read and the charge as laid.

MR. RECORDED: That is all in that book--

THE COURT:

Q What day was it, Mr. Taliaferro, that the person who answers to the description in your book of the first defendant said that which you have read? A August 20th, 1911.

Q Have you any means of ascertaining, by looking at your book, the hour of the day? A No, sir, I can tell you the day of the week, that is all.

Q Are you able to state, either from your own recollection, or by having your memory refreshed, who was the complaining witness in the matter respecting which a person answering to the description of the first defendant gave evidence or made a statement? A The complaining witness?

CASE # 1508

Q Yes. A Thomas Joseph Carney.

THE COURT: I will allow you to recall Carney, and you may ask him whether he made more than one complaint, or was examined in more than one matter that day?

MR. TALIAFERRO: This witness has nothing to do with the complaint, I submit. We can finish with this witness.

THE COURT: Yes, finish with this witness.

MR. TALIAFERRO: Now, Mr. McCormick:

Q Mr. McCormick, you have stated that you did not know of your knowledge whether it was this defendant, or whether it was Muller, that made this statement, "I don't know what name he is called"? A That is right.

Q You don't know? A I cannot swear to that.

Q No (for as you know, it may have been Muller)? A Yes, sir.

MR. TALIAFERRO: You will concede this sheet to be one of the sheets that was signed by Muller?

MR. McCORMICK: Yes, sir.

MR. TALIAFERRO: It is conceded, gentlemen of the jury, that the sheet which I hold in my hand is part of the return from the Magistrate, signed by Muller, and also by the justice, Justice Corrigan.

MR. McCORMICK: Yes, sir.

MR. TALIAFERRO: I offer it in evidence.

CASE # 1508

MR. MC DONALD: I consent.

THE COURT: Received.

The paper received in evidence and marked Defendant's Exhibit "1" of this date.

THE COURT: "First Division. City Magistrate's Court, First District. City and County of New York. This defendant has voluntarily appeared before the undersigned, a Justice of the Peace, on the annexed charge and being informed of his right to make a statement in relation to the charge against him, that the statement is designed to enable him, if he sees fit, to answer the charge and explain the facts alleged against him, that he is at liberty to waive making a statement, and that this waiver cannot be used against him on the trial."

Question: "What is your name?" Answer: George H. Muller.

Question: How old are you? Answer: 35 years. Question:

Where were you born? Answer: N. J. Question: Where do

you live, and how long have you resided there? Answer:

N. City, N. J., 35 years. Question: What is your business or profession? Answer: Lithographer. Question:

Give any explanation you may think proper of the circumstances appearing in the testimony against you and state

any facts which you think will lead to your exculpa-

tion? Answer: "I am not guilty." Signed "George H. Muller"

"I don't know what made me do that". Taken by me the 25th

CASE # 1508

of August, 1911, J. V. Corrigan, City Magistrate".

THE COURT: The words you have last read are words appearing on that sheet before the signature of Muller?

MR. TALLARINO: Sir?

THE COURT: The words which you last read are words appearing on the sheet which you hold in your hand below the signature of Muller?

MR. TALLARINO: Under the signature of Muller, and on the same language which has been read by the witness.

should

THE COURT: I wish you, Colonel, that I think, in the first reference in your exhibit, the paper you have just offered, the complaint, without further testimony, becomes competent, the paper annexed, because it is referred to.

MR. TALLARINO: I beg your pardon; I didn't hear it.

THE COURT: I see, the complaint which is referred to in the paper which you have just read becomes competent now that you have offered that paper in evidence.

MR. ROBERTSON: I offer the complaint.

THE COURT: Received.

MR. TALLARINO: I except.

Offer received and marked People's Exhibit No. 10 of this date.)

THE COURT: It is received for the purpose of

CASE # 1508

A few moments are such in my minutes.

Q And he made him such statement? A Not to my knowledge.

Q. Now, would you have said that to the jury? A. Yes, sir.

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Q. Did you ever mention to him "The Secret in the Family"? A. Not

- 11 -

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10. I am not aware of any other persons who have been arrested in connection with the above-captioned case.

MR. McFARLAND: You brought out part of it, and that opens the door to the admission of all that Garney said.

MR. TALIAFERRO: The rules don't apply. I asked Mr. Jarney if he said anything before the Magistrate's Court about a black sheep and he said he did not. I simply asked the witness whether that statement was made or not.

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May I ask you to look closely at your notes, and see

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if Garney's reply was he had the penis in his mouth for a minute and a half, or for an inch and a half? A "He had Muller's penis in his mouth fully a minute and a half when I opened the door".

 T H O M A S J . C A R N E Y , being recalled on behalf of the People in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. MCCORMACK:

Q Do you remember making a statement similar to that in the Magistrate's court?

MR. TALIAFERRO: Objected to. I asked him the question when he was on the witness stand, if he made that statement, and he said he did not.

THE COURT: I did not ask him to answer.

MR. TALIAFERRO: I object.

Q What did you say? I didn't remember that question, I think I remembered-- I do not remember saying whether I--

THE COURT: The question is did you, in the Magistrate's court, say that?

THE WITNESS: I can't remember that question.

Q You went down yesterday to the toilet room next to the ferry house of the Pennsylvania at Cortlandt Street? A Yes, sir.

Q And you were there when the photographer, Coe, took the

CASE # 1508

photographs? A Yes, sir.

Q And you looked at the hole there; was that in the same condition it was the day that this piece of wood, People's Exhibit No. 3, was cut out? A Yes, sir, with the exception of that board there.

Q And with the exception of this board, in the same condition that it was on the day that the crime was committed?

MR. MCCORMICK: That is all. Now, I ask your Honor to permit me to call some of these witnesses who will testify--

THE COURT: Put your witness on the stand.

MR. MCCORMICK: I will call Isaac Clark.

CASE 1508

I S A A C C L A R K, called as a witness on behalf of the people, in rebuttal, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your full name? A I saac Clark.

Q Where do you live? A Jersey City, 367 Woodward Street.

Q On the 24th of August, 1911, where were you working?

A At the Pennsylvania Railroad, at Cortland Street, New York

Q What was your position? A Porter.

Q Did you ever go in the room over the toilet room?

A Yes, sir.

Q The men's toilet room? A Yes, sir.

Q How many windows are there in that room?

MR. TALIAFERRO: I object to that, if Your Honor please.

THE COURT: I will allow it.

MR. TALIAFERRO: I never asked him one question about those windows. That was the witness William M. Kelly. I never mentioned the windows to him.

THE COURT: I think that is so.

MR. McCORMICK: I asked him how many windows were there, and he said he didn't know whether there was one window in it or not. That enables me, I claim, to produce a witness here who will swear how many windows there were.

CASE # 1508

MR. TALIAFERRO: I never asked him the question.

He made him his witness on that.

THE COURT: I think I will sustain the objection.

Q What was that room used for over the toilet? A You mean the time that occurred?

MR. TALIAFERRO: I interpose the same objection.

THE COURT: I will allow him to answer.

Q I mean a month before the 24th of August?

A What was it used for?

Q Yes. A Just an ordinary room to keep clothes in.

Q Was it kept locked? A Kept locked.

Q Who kept the key of it? A I had one key.

Q Do you know William B. Kelly? A Do I know William B. Kelly?

Q Was he employed by the Pennsylvania, do you know?

A He used to be. I don't know whether he is now or not.

Q Did you ever let him in that room? A No, sir.

Q Did you ever let any other man who had been discharged from the Pennsylvania Railroad Company in there? A No sir.

Q Or did you ever let any one who was then working for the Pennsylvania Railroad Company? A Who was working?

Q Who was working? A Yes, sir.

BY THE COURT:

Q What time in the morning would you unlock the door of that room? A What time in the morning?

Q Yes. A I set there at seven o'clock in the morning.

CASE # 1508

Q And how soon after you got there did you used to unlock the door of that room? A I had to go up there to change my clothes.

Q How soon after you reached the ferry house did you unlock the room? A It stays locked all the time.

Q You kept your clothes inside? A Yes, sir.

Q You unlocked it to get in? A Yes, sir.

Q How long would you stay in? A Well, I can't say. Long enough to change my clothes and go out. Of course, while I am inside the door is not locked.

Q You mean, except during the time you were in the room, every day the door was locked? A The door was locked all the time.

BY MR. MCCORMICK:

Q Do you know whether there were two holes, or one hole, in the ceiling of the toilet on the Saturday after this man was arrested, this defendant?

MR. TALIAFERRO: I object, if your Honor pleases.

A Well, I know there were two.--

THE COURT: I think that is permissible.

MR. TALIAFERRO: Sir?

THE COURT: It is permissible because it relates to a time testified to by your witness rather than testimony given on the direct. I mean to say, it relates to evidence given by witnesses produced by the defense primarily, because the purports now to be mentioning a

CASE # 1508

time testified to by them.

Q Do you know how many holes there were right over the partition dividing the toilet number one from toilet number two? A Well, there was a hole over number one and a hole over number two.

Q On Saturday? A Well, on the day they were caught, before, there were two holes.

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

THE COURT: Strike it out, and the jury will disregard it.

Q I am talking about Saturday, two days after, were there two holes there, or only one? A The same holes were there all the time, the two holes.

Q Just answer my question, "no" or "yes". Did you see two holes there Saturday? A Yes, sir.

MR. McCORMICK: That is all.

MR. TALIAFERRO: That is all.

J O H N H A N N A N, being recalled, on behalf of the people, in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q Now, Mr. Hanna, on the Saturday following the arrest of Wallace, do you know whether there were two holes, or one hole over toilet numbers one and two? A Two holes.

MR. TALIAFERRO: The same objection.

CASE #1508

MR. McCORMICK: Your witness.

THE COURT: Of course, that question was technically improper.

MR. McCORMICK: Leading, I suppose. I inadvertently--

THE COURT: If you take the objection, I will strike out his answer. You may ask another question. Were you in that ferry house, and in that toilet room on Saturday following the arrest of this defendant? "Yes" or "no", Mr. Witness?

THE WITNESS: I don't recall that I was there on that particular day.

Q Well, Sunday, or Friday? A Friday I was there.

MR. McCORMICK: Their witnesses brought out testimony relating to Friday. What was the condition of the ceilings over toilets Numbers one and two.

MR. TALIAFERRO: I object, if your Honor please. That was the evening Dunn testified to. The evening he went there with the defendant's father.

THE COURT: The arrest was made, as I recall the evidence, on Thursday.

MR. TALIAFERRO: Yes, sir.

THE COURT: You have produced certain testimony here bearing upon the alleged condition on Friday and on Saturday and also on Wednesday 9th, and also on March 17th.

MR. TALIAFERRO: Yes, sir.

CASE 1508

THE COURT: I will allow testimony bearing upon the condition at those times, in rebuttal.

MR. TALIAFERRO: I except.

Q On Friday, what was the condition of the ceiling right over the partition between booths number one and two, meaning those nearest to the river? A There was two holes bored in the ceiling.

MR. McCORMICK: That is all.

CROSS EXAMINATION BY MR. TALIAFERRO:

Q How do you remember that? A I remember that on Thursday the holes were bored.

Q How do you know they were bored on Thursday?

A I had occasion to go there Wednesday, and they were not there at that time, and I know they were bored the following day.

Q How do you know they were bored on Thursday? Were you there when they were bored? A I was there when the carpenters started to bore them.

Q You were there ~~at~~ that time? A Yes, sir.

Q And when were you summoned ~~as~~ a witness in this case?

A Yesterday was the first time I was here.

Q That is the first time you were summoned? A Yes, sir.

Q Do you know this case has been called in this Court some four or five times before the trial was entered upon? You know that, don't you? A Yes, sir.

Q And the case has been going on now this is the second

CASE # 1508

week? A It has been going on several days.

THE COURT: How many holes did you with your own eyes see the carpenter bore?

MR. TALIAFERRO: One moment, if your Honor pleases. I didn't understand he said he saw them bore them. He said he saw them commence to bore them.

BY THE COURT:

Q How many holes did you see the carpenter commence to bore? A I saw the carpenter break the cement or concrete in two places in the floor, of the toilet room -- of the abandoned toilet room up stairs.

Q Did you see the carpenter use any tool for the purpose of cutting any wood? A I did not.

BY MR. TALIAFERRO:

Q You did not see him use any tool for the purpose of cutting the hole in the cement? A In the cement, I did., and provided the tools for that purpose.

Q You didn't see any one actually bore these holes?

THE COURT: Referring to the holes in the wood?

MR. TALIAFERRO: Yes.

A I didn't see them bore any holes, no, in the wood.
whether

Q Why is it you don't remember you were there on Saturday or not? A Well, I would not have any occasion to be there on Saturday.

Q Well, you don't remember one way or the other? You stated you don't know whether you was there Saturday or not?

1508
CASE

A I would not say I was there if I didn't distinctly remember being there.

Q You are employed by the Pennsylvania Railroad?

A Yes, sir.

Q In the same line of business as Dunn and Carney?

A I am a clerk connected with the police department.

Q Where is your place of business? A 109 West Street.

Q Work there in the office with these men? A Yes sir.

Q Since this trial has come up, you have heard this case discussed very much, haven't you? A No, sir.

Q Haven't you heard Dunn and Carney talk about it down there? A No, sir.

Q When they would leave here, wouldn't they go to the office? A They haven't come to the Court room every day-- or haven't come to the office every day after leaving the Court room.

Q When they did come there, didn't they talk about the trial? A Not in my presence.

Q Not a word? A Might have said some word. They didn't talk about the case.

Q Didn't say anything about the holes at all?

A Not about the holes.

Q How did they know you knew these holes were being bored on Thursday? A They knew it on the day the holes were bored.

BY THE COURT:

CASE # 1508

Q I understand you were in the upper room at the time that a man began to break the cement, and that he began to ~~break~~ break the cement in two places? A Yes, sir.

Q Now, that is all you saw? A That is all I saw of that work, yes, sir.

BY MR. TALIAFERRO:

Q Did Captain Dunn know, before this trial commenced, that you were up there, and saw those two holes ^{being} out in that cement? A Why, yes, he instructed me to arrange for the carpenter to do it.

Q He instructed you, and you are a clerk in his office? A Yes, sir.

Q You have not been summoned as a witness in this case until to-day? A No, sir.

Q That is correct, is it? A That is correct. Until yesterday.

Q What? A Until yesterday.

MR. TALIAFERRO: That is all.

RE DIRECT EXAMINATION BY MR. McCORMICK:

Q You saw the holes out, you say, Friday? A Yes, sir.

Q Was that the first time you saw them? A No, I saw them Thursday night.

BY THE COURT:

Q And when you say "the holes" what do you mean?

A The holes that were in the ceiling over the toilets.

Q And they were holes in what substance? A Through the wooden ceiling.

BY MR. McCORMICK:

Q Over which toilets? A Over toilets one and two.

CASE # 1508

[illegible]

1000 Broadway, New York, N.Y. 10003

[illegible]

THE... OF... OR... WAS IT NOT?

Now, I want to ask you again on Friday, you were in the

Q. Q. Yes. A. Yes, sir.

MR. TALLAFORD: I make the same objection.

BY THE COURT:

A About nine o'clock.

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Q In the evening? A You mean--

Q At what hour of the day on Friday were you in the toilets? A About nine o'clock.

Q In the evening? A In the morning.

Q You were in these toilets at about nine o'clock on the morning of Friday, August 26th? A Yes, sir.

THE COURT: I will hear him.

MR. TALIAFERRO: If your Honor pleases, of course the main issue in the case made out by the people was that there was two holes there on Thursday. It stands to reason if they were there on Thursday they were there on Friday -- the same issue exactly.

THE COURT: You have produced certain testimony, certain witnesses who say that they were on those premises at certain times named. I will receive the evidence.

MR. TALIAFERRO: I except.

BY MR. McCORMICK:

Q What was the condition of the ceiling? A There was two holes bored on each side.

Q How far apart were those holes? A They looked to be about three inches.

Q And how large were the holes? A Looked like a two inch hole to me.

BY THE COURT:

Q Were they both over one toilet? A There was four toilets there. Two were up here, so you could look down in

CASE # 1508

These two toilets, and two up there, so you could look down in these toilets.

Q So, you say there were four holes all together?

A Yes, sir.

BY MR. MCCORMICK:

Q There were four toilets there? A Four toilets, yes, sir.

Q And there were two holes right over the partition between toilets one and two? A Yes, sir.

Q Now, you spoke of two other holes. Where were they?

A The other two toilets.

MR. MCCORMICK: That is all.

CROSS EXAMINATION BY MR. LALLIAFERRO:

Q Are you employed by the Pennsylvania Railroad?

A Yes, sir.

Q When were you first summoned as a witness in this case?

A Yesterday.

Q Yesterday? A Yes, sir.

Q Did you know this trial was going on? A Yes, sir.

Q Did you ever say anything to Captain Dunn about seeing these two holes in the ceiling? A No, not that I know of.

Q Never had any talk? A I don't think I did. I don't remember.

Q How did the people's counsel know that you knew these two holes were there? A I was on duty at that time at Cortlandt Street, New York.

CASE # 1508

Q I mean, yesterday. How did they know that you were informed as to these holes being there? A When I am on duty there as vehicle ticket collector, I have to act as station master, and I am supposed to know everything that is going on there.

Q Who came to see you about it yesterday? A Captain Nutter.

Q Who? A Captain Nutter.

Q Captain Nutter? A Yes, sir.

BY THE COURT:

Q When for the first time did you speak to anybody about having seen holes in the ceiling? A I can't answer that. I don't remember.

Q Did you speak to anybody about having seen holes in the ceiling over the toilet floor between the time when you say that you first saw them and the time of sitting down in that chair? A Well, I have talked about it, yes, sir, but I can't tell you who I spoke to.

BY MR. TALIAFERRO:

Q What is the answer? A I say, I have spoken about the holes, but I can't say who I talked to about it.

Q Did you ever speak to Captain Dunn about it?

A No, I don't think I did.

Q You say Captain Nutter came to see you about it yesterday? A Yes, sir.

Q Where did he find you? A On duty at Cortland

CASE # 1508

Street, Jersey City.

Q Did he tell you what he wanted you to swear to?

A No, sir.

Q Did he tell you what he wanted you to swear to?

A He asked me if I remembered when those holes were bored there, and I said yes.

Q Did he serve a summons on you? A No, sir, he asked me to come here.

Q Did you come without a summons? A I did, yes, sir.

THE PEOPLE OF THE STATE OF NEW JERSEY, by and through the undersigned, the undersigned, a witness on behalf of the people, in and to the Court, do hereby swear, testified as follows:

EXAMINATION BY THE PROSECUTOR:

Q What is your name? A Frederick Wands.

Q Where do you live? A Jersey City, 321 Pacific Avenue.

Q What is your occupation? A Night watchman.

Q Where? A Jersey City Ferry.

Q On the 25th of August, 1911, were you there?

A Yes, sir, I was.

Q On the 25th of August, I mean Friday, the day after this defendant was arrested? A Yes, sir.

Q Did you go into the men's toilet, on the ground floor? A No, sir.

Q Did you go in there on Saturday? A I went in there--

CASE 1508

THE COURT: "Yes", or "no", sir.

A (Continuing) I am in there pretty much every night, for that matter.

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

Q Do you remember whether you were in there Friday, Saturday or Sunday? A I was in there Sunday, yes, sir.

Q Did you look at the ceiling over toilets Numbers one and two? I mean by that the two places nearest to the River?

A Yes, sir.

Q The two toilets nearest to the river? A Yes, sir.

Q Did you look over at the ceiling? A Yes, sir.

Q What did you see? A I seen those holes, where I had to change my uniform, up stairs, I see the holes there, and I went over and looked down.

Q What day was that? A That was, I think, Rhursday evening.

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

THE COURT: Strike it out.

Q You saw them there after that? A Yes, sir.

Q You saw them from up stairs, and you saw them from down stairs? A Yes, sir.

MR. TALIAFERRO: Don't lead him.

MR. MCCORMICK: He just said that.

MR. TALIAFERRO: Oh, no.

1508
CASE 1508

MR. McCORMICK: That is all.

CROSS EXAMINATION BY MR. TALIAFERRO:

Q You are employed by the Pennsylvania Railroad Company?

A Yes, sir.

MR. TALIAFERRO: That is all.

I S A A C C L A R K, being recalled on behalf of the people, in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q Do you remember the day this man was arrested, the defendant? A Well, yes, I heard about it.

Q Well, the next day, I mean Friday, the 25th of August 1911, were you in the toilet room of the men's toilet?

A Up stairs, or down?

Q Either? A Well, I was up stairs, and I was down stairs, too.

Q Well, did you notice anything about the ceiling of the toilet room? A Oh, yes, sir.

Q What did you notice? A I noticed the two holes.

Q And those two holes were where? A Over One and two.

BY THE COURT:

Q How many holes were there all together in that ceiling? A In that ceiling?

Q Yes, all together? A On the top floor?

Q No, how many holes were there in the wooden ceiling over the toilet? A All together?

CASE 1508

Q All together? A Four.

BY MR. McCORMICK:

Q And where were those four holes? A Over each toilet

Q What do you mean -- I am speaking of toilets one and two, meaning those nearest to the river? A There was two over the toilets one and two.

Q Were they anywhere near where the partition would be if the partition ran all the way up? Were they right over the partition? A They were right over the toilets. There was a hole over number one, and a hole over number two.

BY THE COURT:

Q How far apart were those holes? Show us with your hands? A Well, I would judge about six inches.

Q And how big were the holes? A Well, I don't know exactly how big the holes were, but I know the holes was big enough to look down through and see.

BY MR. McCORMICK:

Q Did you ever look down there? A Lots of times.

Q And what could you see when you looked down?

A I could see the toilets.

MR. McCORMICK: That is all.

CROSS EXAMINATION BY MR. GALIATERRA:

Q Do you say one of those holes was over Number One and one over Number Two? A Yes, sir.

Q One looked down into number one, and the other looked down into number two? A Number two.

CASE # 1508

Q Hold your hands about how far apart they were?

A I judge about six inches. I didn't measure the holes.

Q Was either of those holes over the center of number two? A There was a hole over number one, and there was a hole over number two.

Q I am asking whether either one of those holes was over the center of number two? A Over the center?

Q Yes. A I don't know what you mean, over the center.

Q Over the middle of number two? A (No answer)

BY THE COURT:

Q Suppose you were sitting -- suppose you were in number two, and you looked up at the ceiling, whereabouts would the hole be? A Well, I judge-- the partition is there, there was a hole over this side, and there was a hole over this side, and there was a hole over this side, about that far (indicating). That is about as near as I can judge.

MR. TALIAFERRO: That is all.

HENRY TAYLOR, called as a witness on behalf of the people, in rebuttal, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. MCCORMICK:

Q What is your name? A Henry Taylor.

Q Where do you live? A 25 Ashland Place, Brooklyn.

Q What is your business? A My business, I am employed

CASE #1508

by the Pennsylvania Company, going on twenty-two years, at Cortlandt Street Ferry, clean up the waiting room.

Q Twenty-two years? A Yes, sir.

Q In one job? A One job.

Q What is that job? A That job is sweeping up the waiting room and keeping the paper and banana skins off the floor.

Q I don't think the jury hear you? A Keeping the room clean, sweeping and dusting, and keeping the paint clean; general janitor's work.

Q Last August, do you remember the day this defendant was arrested? A I remember one day last August when the holes were cut.

Q What day was that? A I didn't set it down.

Q How many were cut at one time? A Four.

Q Did you see them cut? A I see them cut.

MR. TALIAFERRO: I object to that, if your Honor please. That has been gone over, the time of cutting the holes.

THE COURT: Strike it out.

Q I am talking about the day after the four holes were cut? A The day after the four holes were cut?

Q Yes. Did you see the holes that day? A Yes, I saw the holes.

Q How many of them did you see? A Four.

Q And where did they come from? A They went from the

CASE 1508

upper floor down to the lower floor.

Q Now, I am talking about what you could see. We are now down stairs, in the toilet room? A Yes, sir.

Q How many toilets were there at the end of that room?

A The end of that room, four.

Q Where were these holes in respect to those toilets?

A Two holes was cut in number one, and two holes was cut in number three.

Q Were the holes that you say were cut in number one anywhere near toilet number two? A Yes, the two toilets were right together, number one and two.

Q Did they seem to be over toilet number two, or toilet number one? A Number one.

Q Were they anywheres near the partition ^{or} dividing ~~the~~ line?

MR. TALLAFERRO: Ask him where they were.

Q Tell us where they were? A Yes, near the partition.

Q And how big were the holes? A I didn't measure the holes. I couldn't tell you.

Q About as big as that (Handing witness People's Exhibit No. 3)? A Yes, I guess fully as big as that.

Q Did they look anything like that? A Yes.

THE COURT: We will suspend now. Gentlemen of the jury, you are admonished not to discuss with any one or among yourselves anything connected with this trial, or form or express any opinion thereon until the same is

CASE # 1508

submitted to you.

(The Court accordingly took a recess until 2 P. M)

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

H E N R Y T A Y L O R , resumes the stand.

MR. McCORMICK: I am through with the witness.

THE COURT: Any cross examination?

MR. TALIAFERRO: No.

H A R R Y T U C K E R S A N D E R S O N, being recalled
on behalf of the people, in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q You remember the day this defendant was arrested?

A Yes, sir.

Q On the next day, Friday-- A Yes, sir.

Q (Continuing) Were you in the toilet room? A On the
night he was arrested, I was in the toilet.

Q I am asking about the next day, on Saturday, were you
in the toilet room? A No, not the next day, I was not.

Q Or on Saturday? A (No answer)

Q (By the Court) Were you in the toilet room on the
Saturday following the arrest of this defendant? "Yes" or
"no", or you don't remember? A No, sir.

Q Now, did you notice the lower right hand window?

MR. TALIAFERRO: When?

MR. McCORMICK: I am speaking now of the window you

CASE #1508

said you broke.

MR. TALIAFERRO: I know, but what time.

MR. MCCORMICK: On Friday after the arrest, the next day after the arrest of the defendant.

MR. TALIAFERRO: He said he was not in there.

MR. MCCORMICK: The window.

MR. TALIAFERRO: He was not in there.

MR. MCCORMICK: He did not have to go in.

Q Did you notice that window? A Yes, sir.

Q What was its condition? A (No answer)

Q (By the Court) From what point did you see the window?

A From the boiler room, on the outside.

Q What was its condition on Friday? A Broke.

Q What was its condition on Saturday? A Saturday I didn't look at it.

Q Did you look at it at any time after Saturday?

A Yes, sir.

Q For long a period of time? A About two weeks afterwards.

THE COURT: Are you able to say whether you looked at it any time on February 9th?

THE WITNESS: No, sir.

THE COURT: Or at any time on March 7th?

MR. MCCORMICK: I think there is testimony to show it was replaced then.

THE WITNESS: No, sir, I am not.

CASE # 1508

MR. MCCORMICK: That is all.

CROSS EXAMINATION BY MR. TALIAFERRO:

Q You say it was broken. Broken how? A I broke it with that fist, that hand (Indicating)

Q How much of it did you leave in there? A One corner of it, about half a moon, just a small corner remained.

Q Which corner? A Up in this far corner.

Q What day was that? A That was on the 20th of August, on a Sunday night, between the hours of eight and nine o'clock.

MR. TALIAFERRO: That is all.

JAMES R. THOMPSON, called as a witness on behalf of the people, in rebuttal, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. MCCORMICK:

Q What is your full name? A James R. Thompson.

Q Where do you live? A 15 West Seventeenth Street, Bayonne.

Q What was your business on the 24th of August, 1911?

A Clerk in the office of the captain of Police.

Q Do you remember the day this defendant was arrested?

A (No answer)

Q Do you remember that he was arrested? A I remember that he was arrested, yes, sir.

Q Were you in the toilet room adjoining the smoking room of the ferry house on the day after his arrest? A Yes.

CASE # 1508

Q Did you notice the ceiling? A Yes, sir.

Q What was its condition over booths number one and two, the toilets, I mean the two toilets nearest to the river?

A There were two holes in the ceiling.

Q On that day, did you notice the window, a part of which was alongside of booth number one? A No, sir.

Q Did you notice that window any time after the 14th of August? A No, sir.

MR. MCCORMICK: Your witness.

CROSS EXAMINATION BY MR. TALLAFERRO:

Q You were a clerk in Captain Dunn's office, were you?

A Yes, sir.

Q Employed by the Pennsylvania Railroad? A Yes, sir.

Q And your office was 109 West Street? A Yes, sir.

MR. TALLAFERRO: That is all.

RE DIRECT EXAMINATION BY MR. MCCORMICK:

Q Oh, were you up stairs in the room above on the 25th or 26th? A The 25th, I was, yes, sir.

Q That is the day after he was arrested? A Yes, sir.

Q What did you notice up there in regard to the floor? I am speaking of the room up stairs over the toilet?

A I noticed the concrete was cut out, and there were two holes in the ceiling.

Q And how many holes were there all together up there?

A I only looked at two.

Q And those two were how far from the side of the

CASE # 1508

building nearest to the river, about? A They were about ten feet. They were not the two holes that I seen from down below.

Q Did you see the two holes which you saw from below above? A No, sir.

Q You did not look at that? A No, sir.

MR. MCCORMICK: Your witness.

MR. TALLAFERRO: That is all.

ROBERT BLACK, called as a witness on behalf of the people, in rebuttal, being first duly sworn testified as follows:-

DIRECT EXAMINATION BY MR. MCCORMICK:

Q What is your name? A Robert Black.

Q Where do you live? A 209 East Seventy-sixth Street.

Q What was your business on the 24th of August, 1911?

A Night watchman for Henry Steers,

Q Who is Henry Steers? A 17 Battery Place.

Q Where were you working at that time? A Cortlandt Street.

Q How close to the Pennsylvania Station? A Fifteen feet away from it.

Q And what part of the Pennsylvania Ferry house were you fifteen feet away from? A Towards the north.

Q Towards what? A Towards the north.

CASE #1508

Q Were you ever in the Pennsylvania toilet room?

A I was, yes, sir.

Q How far were you working at that time from the window that looks into the toilet room? A Fifteen feet.

Q And how many days after the 14th of August were you working there? A Two months after.

Q Now, do you remember to say this defendant was arrested? A I don't know that gentleman.

Q Did you notice, on the 14th of August, whether or not there was any pane of glass broken in that window? A I do, yes, sir.

Q What? A I do.

Q You do? A Yes, sir.

Q Can you tell whether it was the upper, or lower, or left or right? A The lower pane.

Q Right, or left? A Towards the left as you face it.

Q Show us? Towards the left? A Towards the left.

Q Was it broken or not? A It was broken.

Q How was it broken? A Well, half way broken.

Q How long did it remain broken? A That I could not say.

Q Now, suppose the window was where I am, you see?

A Yes, sir.

THE COURT: Take that as the pane of glass.

(Handing book to witness)

THE WITNESS: There is four panes in the window.

CASE # 1508

This here is the window that was broke (Indicating)

THE COURT: You are ~~pin~~ pointing to the lower left hand pane?

THE WITNESS: The lower pane.

Q You mean, looking at it from the inside, or the outside? A Looking from the outside.

MR. McCORMICK: That is all.

CHIEF MAGISTRATE JOHN. TALIAPERO:

Q And looking from the outside, the lower left hand pane was broken? A The left hand pane was broken.

Q And it was broken in halves? A In halves.

Q There was about half the window still there?

A Half the window left.

Q You are positive about that, Mr. Black, are you?

A Yes, sir, I am.

Q And you are not connected with the Pennsylvania Railroad? A No, sir, I am not.

MR. TALIAPERO: That is all.

J O H N G. S U S T M A N, called as a witness on behalf of the people, in rebuttal, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your name? A John G. Sustman.

Q Where do you live? A 366 Gates Avenue, Brooklyn.

Q What is your business? A Architectural draughtsman.

CASE # 1508

Q Now, have a drawing of the Pennsylvania railroad

and street East 10th Street? A I did.

Q Have you got it with you? A Yes, sir.

Q When did you make it? A 1909.

BY MR. BROWN:

Q When did you make it? A 1909.

Q In 1909, where was that drawing? A Yes, sir.

Q What was it for? A I believe that is on the
other (other) side of the street, isn't it?

BY MR. BROWN:

Q Is there any other drawing which relates to
the rope over the wall? A Yes, sir, there is.

Q Where is it? A It is this section
right here (indicating on diagram).

Q Hold it up, and show it to the jury. Put your finger
on the part?

MR. BROWN: It has not been offered in
evidence yet.

MR. CLOVER: Offer it in evidence. Any ob-
jection?

MR. BROWN: Made when? In 1909?

MR. CLOVER: Yes.

Q Have there been any changes made in that room since?

A Not since 1909, sir.

MR. CLOVER: Offer it in evidence.

MR. BROWN: I have no objection.

CASE # 1508

THE COURT: Received.

(Received in evidence and marked People's Exhibit
No. 11, of this date)

Q How many windows are there in that room? A Four
windows.

Q Speak out? A Four.

Q Aint there two at the end, no more? A Yes, sir.

Q That makes one, don't it? A (No answer)

Q Look at your diagram? A There is only four shown
on the diagram.

Q How long is it? A Sixteen feet.

Q How deep? A Sixteen feet.

Q How wide?

Q Twelve feet.

Q That is all?

Q That is all.

O V E R N E W . . . A P P E A R I N G , being recalled on behalf of the
people, in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. McDONALD:

Q Now Mr. Peters, I show you people's exhibit No. 1,
which is a photograph of the doors leading to the four
toilets in the men's toilet at the Cortlandt Street Ferry
house (Sanding same to witness). You can see from that
photograph how you open the doors to booths, two, three and
four? A Yes, sir.

CASE # 1508

Q That is, you open it from the right, and the hinge is on your left as you face the door? A Yes, sir.

Q How do you open the door to booth number one?

MR. TALIAFERRO: Objected to. All that is a part of the people's case in chief.

THE COURT: I think I will receive it. I will receive it for the reason that certain witnesses for the defense purport to state certain things that they saw when standing in a certain position, and it bears upon what would be seen by a person in the act of opening that door.

A It opens in the same position as the other doors.

Q That is, your right hand would be nearest to the part of the door that would swing open? A Yes, sir.

Q And your left hand nearest the hinge? A Yes, sir.

Q As you face the door, on the outside? A Yes, sir.

THE COURT: The hinge of each door as you face the door is to your left.

MR. TALIAFERRO: Yes, sir.

Q When you are standing outside? A As this picture is now, the hinge would be to the left, and the handle to the right.

Q To your right? A Yes, sir, to my right hand.

BY THE COURT:

Q And those doors being out? A Yes, sir.

Q When you are outside, you pull them

CASE # 1508

towards you? A Yes, sir.

BY MR. McCORMICK:

Q And they could not swing in? A No, sir.

Q Did you notice the window, part of which faces booth number one? A Yes, sir; that is a small window.

Q On the day after this man was arrested--

MR. TALIAFERRO: Objected to. That has all been gone over, the day after, and the day after that.

THE COURT: I will allow him to answer.

MR. McCORMICK: By your witness.

A Yes, sir.

Q What was its condition on the 25th? A On the 25th, the pane was broke.

Q (By the Court) Which pane was broken? A To your right.

Q Up, or below? A It appears to me that it was the lower pane.

Q It appears to you. Don't you know? A To the best of my belief.

Q Right, or left, as you face it? A To my right.

Q As you face it, from the outside of the building?

A To my right.

Q Do you know how long that window remained broken before a new pane was put in? A Well, to the best of my recollection, I don't know.

MR. McCORMICK: By your witness.

CASE # 1508

CROSS EXAMINATION BY MR. TALIAFERRO:

Q You mean by that the pane was put back there within a week after that time? A A week or more, to my knowledge, that pane was still broke.

Q Well, you mean by that, within a week or more they put another pane in there? A No, I didn't have occasion to go in there very often.

Q You say it appears to you it was the right hand lower window? A Yes, sir.

Q You don't mean to say you can swear to it positively? A I feel pretty positively that it was to my right.

Q To your right? A Yes, sir.

Q What is it that appears to you? A Because I looked through that window on the night of the 23rd.

Q The night of the 23rd? A Yes, sir.

MR. TALIAFERRO: That is all.

MR. TALIAFERRO: May I recall Robert Black?

MR. BLACK: What for?

MR. TALIAFERRO: He is the man who testified it was the right hand lower window that was broken.

MR. TALIAFERRO: I think we will let it stand at that.

MR. TALIAFERRO: I have a very important question to ask him.

THE COURT: Very well, call him back.

CASE # 1508

R O B E R T B L A C K, being recalled, testified as follows:-

THE COURT: I will ask him a question before you ask him any. You may proceed.

DIRECT EXAMINATION BY MR. McCORMICK:

Q You have been under subpoena by the people in this case? A Yes, sir.

Q For how long? A Two days.

Q And you have attended here each day? A Yes, sir.

Q Were you here Monday? A I was here last Thursday, without a subpoena.

Q Are you or have you been under subpoena by the defendant? A No, sir.

Q Were you out here in the corridor yesterday, before luncheon? A Yes, sir.

Q Did you have a conversation with Mr. Francis, attorney for the defendant, about that time? I mean, by Mr. Francis, this man who sits here (Indicating Mr. Francis) "No" or "Yes"? A No, sir.

Q You did not talk to him? A I talked to him, but not anything implicating--

Q I just want to know if you talked to him? A Yes, I talked to him.

Q Did he speak to you first, or did you speak to him, first? A He spoke to me first.

Q You were talking with him about ten minutes, weren't

CASE # 1508

you? A Not quite. About five minutes.

Q Now, give us that entire conversation, what he said to you and all that you said to him? A Well, he asked me who was I for; what was I doing up here. I told him I was in this case, this young man that had been locked up. He said, "Is that all?" I said, "Yes, sir". I stood there for a while, and he walked away, and I walked away.

Q Did that take five minutes? A Well, I stood there. Make it five minutes.

Q You were talking to him a considerably longer time than that, were you not?

MR. TALIAFERRO: Don't lead your witness.

THE COURT: How long were you actually talking?

THE WITNESS: Just about five minutes.

Q What else was said? A That was all that was said.

Q Why did you tell -- or did you not, on several occasions, tell persons connected with this case that it was the lower right hand window that was broken, "no", or "yes"?

A No, sir.

MR. TALIAFERRO: Wait a minute. I object to that, if your Honor please. It is his witness.

MR. McCLINTOCK: It is a hostile witness.

MR. TALIAFERRO: He answered "no". He can't contradict him. And I will call your Honor's attention to the fact that he is the only man who is not in the Pennsylvania Railroad who has been put on

8091508
CASE #

the stand.

MR. McCLIRMICK: And the only man seen talking to the defendant's lawyer.

THE COURT: I don't think he has been shown to be a hostile witness. I will sustain the objection.

I S A A C C L A R K, being recalled on behalf of the people, in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. McCORMICK:

Q Did you notice, the day after this defendant's arrest, the window, part of which looks into booth Number One?

A That was broken.

Q Which pane was broken? A The first pane from the window.

Q Well, did you look at it from the outside, or from the inside of the building? A I looked at it from the outside and inside both.

Q Have you looked at it from the outside, as you face towards the window, was it on your right hand, or left hand?

A On the right hand, that side (Illustrating)

Q And was it the upper pane, or the lower pane? There were four panes there, weren't there? Two above and two below? A Well, it was the upper pane.

Q The upper pane? A The upper pane.

MR. McCORMICK: That is all.

CASE #1508

CROSS EXAMINATION BY MR. TALIAFERRO:

Q You say it was the upper pane that was broken?

A The upper pane.

BY THE COURT:

Q Sure about that? A Yes, sir, it was the upper pane.

BY MR. TALIAFERRO:

Q That is, the upper right hand pane? A The upper right hand pane.

MR. TALIAFERRO: That is all.

MR. McCORMICK: The people rest.

C L A R E N C E F R A N C I S, called as a witness on behalf of the defendant, in sur-rebuttal, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. TALIAFERRO:

Q What is your name? A Clarence Francis.

Q What is your address? A 27 William Street.

Q Are you a lawyer practicing at this Bar? A Yes sir.

Q How many years have you been practicing? A Since 1879.-- 1880.

Q Have you held official positions in the City of New York? A Yes, sir.

Q What position? A I was deputy attorney general for nine years in this City.

Q Are you associated with myself as counsel for the defendant in this case? A Yes, sir.

CASE # 1508

Q Did you have a conversation yesterday with a witness by the name of Black, who has just been on the stand? A I did.

Q How long did that conversation last? A I should say about three or four minutes.

Q Did you know at the time that he had been summoned by the people? A At the end of the interview, he mentioned that, and I ceased to talk with him then.

Q As soon as you learned that he had been summoned by the people, did you cease to talk with him? A I ceased to talk with him.

Q Did you know, when you commenced the conversation with him, that he had been summoned by the people? A I did not.

Q In preparing this case, you and I have prepared a list of witnesses? A We have.

Q And was his name among that list of witnesses?

A It was.

Q And how long had it been on the list we either intended to investigate or examine? A For some days before that.

Q Have you been down to the dock to see if you could get an interview with him? A I have.

Q And did you fail to have an interview? A I was not allowed on the dock.

Q Who kept you off the dock? A The watchman, on the gate.

Q What was stated to you?

MR. McCORMICK: Objected to.

THE COURT: Objection sustained.

CASE # 1508

Q When you had this conversation with him yesterday, did you say anything to him about what his testimony would be in this case? A No, I did not.

MR. TALIAFERRO: That is all.

MR. McCORMICK: That is all.

GEORGE WEIKLY, the defendant herein, recalled.
BY MR. TALIAFERRO:

Q Mr. Weikly, when you were carried before the magistrate, Magistrate Corrigan, for the preliminary hearing, on the 25th day of August, 1911, did you make any statement, in substance as follows: "I don't know what made me do that"?

A I positively did not, no, sir.

Q Did you make any such statement or any statement that could be construed that way? A No, sir.

MR. TALIAFERRO: That is all. That is the defendant's case.

MR. McCORMICK: The people rest.

MR. TALIAFERRO: Shall I proceed?

THE COURT: I presume, for the purposes of the record, you renew your motions?

MR. TALIAFERRO: Yes, I renew the motion to dismiss the indictment, and that your Honor instruct the jury to acquit.

THE COURT: Motion denied.

MR. TALIAFERRO: Exception.

CASE # 1508

MR. McCORMICK: May I speak with you, in the presence of the defendant's counsel?

THE COURT: Certainly.

(Mr. McCormick and Mr. Taliaferro confer with the Court)

MR. TALIAFERRO: If your Honor pleases, I don't like at this moment, on account of my own physical condition, for some days, I have been very unwell, last night I had quite a bad night, if your Honor will grant it, I would like your Honor to adjourn until to-morrow morning, so I may have time to go over the record. It is a very voluminous record.

THE COURT: I will do it. Gentlemen of the jury you are admonished not to converse among yourselves on any subject connected with the trial in this case, or form or express any opinion thereon, until the same is submitted to you. You are excused until to-morrow morning at half past ten.

(The Court accordingly took a recess until to-morrow, Thursday, March 21st, 1912, at 10:30 A. M.)

CASE # 1508

THE PEOPLE ETC. against GEORGE WALLIS.
(True name George Weekly)

New York, Thursday, March 21st, 1912.

TRIAL CONTINUED.

(The Clerk calls the roll of jurors, all answering
except No. 2)

THE COURT: There is a juror absent. Doctor, will
you kindly take that chair?

FRANK A. McGUIRE, called as a witness and
being first duly sworn, testified as follows:-

EXAMINED BY THE COURT:

Q Kindly give me your full name? A Frank A. McGuire.

Q You are a physician, duly licensed to practice, and
you are the physician in attendance at the City Prison?

A Yes, sir.

Q This morning, you were called upon to examine, pro-
fessionally Francis C. Cozzins, the second juror in this
case; is that so? A Yes, sir.

Q What did you find his physical condition to be?

A As a result of a physical examination, I found that he
had what is called hemi-plegia, that is, a right side
paralysis, with a facial paralysis upon the opposite side.
He was unable to articulate. His pulse was rapid. The
pupils were normal. He was not very responsive.

Q That condition would, of course, incapacitate him

CASE # 1508

from acting as a juror in this case to-day? A Most decidedly. It is due to a hemorrhage in the brain.

Q Are you able to express an opinion, with reasonable certainty, as to whether that will render it impossible for him to go on as a juror in this case, say, within the next week? A In my opinion, he will be unable to go on within the next week. In fact, I think the period of convalescence would be longer than that, and even at that it might leave some evidence of the hemorrhage, as a result of damage to the brain.

THE COURT: The court has learned with very deep regret of the misfortune that has befallen the second juror in this case. He has served very acceptably as a juror during this term of the Court, and sympathy is expressed for him and his family in the affliction which has come upon him. I think, in the light of that, the District Attorney and Colonel Taliaferro will agree and consent to a mistrial of this case.

MR. MCCORMICK: The District Attorney consents.

MR. TALIAFERRO: If your Honor please, in behalf of the defendant, he being personally in Court, I am willing to go on with eleven jurors.

THE COURT: That is impossible, Colonel, you cannot consent to it.

BY MR. TALIAFERRO:

Q Well, did I understand you, Doctor, to say that he

CASE # 1508

might be able to sit within a week, or not? A I did not.

It is very indefinite. It is one of speculation.

Q My recollection is he is rather an old man?

A He is rather advanced in years. Those elements have got all to be considered.

Q Do you think, Doctor, that a further examination of the juror to-day or to-morrow, would probably be more satisfactory as to whether he would be able to attend within the next three or four days? A That is too short a time.

Q You think there is no possibility of his being able to get here by Monday? A That is my judgment. I might be influenced by a further examination, but I hardly think so.

MR. TALIAFERRO: I am not familiar, if the Court please, with the practice in the criminal law so far as juries are concerned. I suppose your Honor is familiar with the authorities.

MR. McCORMICK: I think that it has been settled by authority that a defendant cannot consent to be tried by eleven jurors.

MR. TALIAFERRO: I knew that was so in capital felonies. Whether it applies to ordinary felonies, such as this, punishable simply by imprisonment, I don't know. I have seen it done in other place. There is no statute on that subject, is there?

THE COURT: I think it has been held that the jury must consist of twelve men. I can't mention now the cases,

CASE # 1508

entire matter is one respecting which I am reasonably certain.

MR. ALIAPIERO: My recollection is the Courts have uniformly held that a juror in ordinary felonies punishable by imprisonment may waive rights. In a capital felony, we cannot. If there is any doubt in your Honor's mind on that subject, and the District Attorney will be willing to go on with eleven jurors, we might take time to examine that subject.

THE COURT: Well, I feel reasonably certain about it, but if you and the District Attorney are in doubt about it, and have any authority that you care to bring to my attention, of course I will consider it.

MR. ALIAPIERO: There will be no necessity of doing that, unless the District Attorney will agree to go on with eleven men, and if we find it is authorized by law.

MR. MCCORMICK: I am willing to go on with eleven, but I know the law is it cannot be done, and if your Honor desires, I will furnish the authorities.

THE COURT: I feel confident that that is the law, Colonel, that it cannot be done. I think there was a case not very long ago in which an opinion was written by Mr. Justice Giegerich, in which he went over the matter, and my recollection of that case is that a twelfth juror was brought in, I may be wrong about that, and the evidence

CASE # 1508

read, without the re-appearance of witnesses.

MR. STRYKER: I handled that case. It was tried in this part, the Toledo case, and it was done under stipulation, and we brought in a new juror, and the testimony was read, brought in a new juror. There is no question about the fact that you can't go on with eleven jurors.

THE COURT: I think Judge Giegerich held you could not even go on by reading the testimony.

MR. STRYKER: He did, and granted a certificate on that ground. It is now on appeal to the Appellate Division.

MR. TALIAFERRO: That was not a capital felony.

MR. STRYKER: No, it was a felony, subornation or perjury.

MR. TALIAFERRO: Did he hold, in so many words, that you could not go on with twelve jurors?

MR. STRYKER: In examining the authorities, I can't name the case--

THE COURT: Suppose you bring down your printed points in that case.

MR. STRYKER: I will be glad to do it. I will do it now.

THE COURT: I will hold the matter in abeyance. You don't care to ask the Doctor any further questions, do you?

MR. TALIAFERRO: No.

CASE # 1508

THE COURT: I am inclined to think, Colonel Taliaferro, that it cannot be done. The case of the people against Santicimi was a murder trial, but in giving expression to the views of the Court, Judge Strong apparently draws a distinction merely as between civil suits on the one hand and all criminal cases on the other. An effort was made in the case of the people against Toledo to obviate the rule as laid down in the Santicimi case, by bringing in at a later stage in the trial another juror and having the testimony read to him. Whether that was properly done or not is now a matter awaiting decision in the Appellate Division, a certificate of reasonable doubt having been granted by Mr. Justice Giegerich, in all probability any Supreme Court Judge would, on the authority of what Judge Giegerich did to grant a certificate of reasonable doubt, would certainly be a grave question as to the validity of any verdict.

MR. TALLAFERRO: I suppose Judge Giegerich cites as authority.

THE COURT: Well, he cites the Santicimi case, and argues from it, by deduction and analogy.

MR. TALLAFERRO: I am quite sure there is a general holding in all states that a man can waive the absence of one juror in a felony case, but not in a capital case. I have seen it done time and again, in two other states.

THE COURT: The jurors in the case on trial have

CASE # 1508

been called, have they not?

THE CLERK OF THE COURT: Yes, sir.

THE COURT: Colonel Taliaferro, you consent to a mistrial?

MR. TALIAFERRO: Yes, sir.

THE COURT: And the District Attorney does?

MR. McCORMICK: Yes, sir.

THE COURT: Gentlemen, you are excused from further consideration of the case, and you are excused until Monday morning, at half past ten.

CASE # 1508