

START

981

CASE

-: I N D E X :-

	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-D.</u>	<u>RE-C.</u>
John C. Lesley	3	18		
Charles Duffy	39	45	61	
Thomas Sweet	61	65	74	76
Arthur Chard	79			
William M. Van Saun	80	80		
Frank Sargent	83	85		

.....

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

#39

-----X
THE PEOPLE OF THE STATE OF NEW YORK:

vs.

A R T H U R C H A R D ,

Before:
HON. JAMES T. MALONE, J.
and a Jury.

-----X
New York, April 6, 1909, at camera.

Indicted for Sodomy.

Indictment filed March 19, 1909.

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

For the People: ASST. DIST. ATTORNEY FREDERICK B. McNISH.

For the Defendant: CHARLES J. CAMPBELL, ESQ.

A jury was duly impaneled and sworn.

James E. Lynch,
Official Stenographer.

After a jury had been duly impaneled and sworn:

THE COURT: Gentlemen of the Jury, you must not discuss this case, nor form nor express any opinion about it, but keep your minds open and free until it is submitted to you.

I will relieve you until half past eleven to-morrow morning, as there is another case on here that I desire to finish before taking up this case. For that reason, you need not report here until that time, but I will be glad if you will be promptly here at half past eleven.

New York, April 7, 1909.

TRIAL RESUMED.

MR. CAMPBELL: May it please the Court, during the District Attorney's opening and the taking of the testimony, I respectfully ask that all the witnesses be excluded from the Court room.

THE COURT: Yes, they may, but I will ask them to stay within convenient reach of the officers, so that we will not be delayed.

Mr. McNish opened the case on behalf of the People.

JOHN CLIFFORD LESLEY, being called and
duly sworn as a witness on behalf of the People, testified
as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q Where do you work, Lesley? A 160 Bleecker street,
Mills Hotel.

Q Mills Hotel, No. 1? A No, 1, yes, sir.

Q That is on Bleecker street, in the city and county of
New York, between what streets? A Between Thompson street
and Sullivan street.

Q Then it is on the south side of Bleecker street?

A Yes, sir.

Q And that is a hotel accommodating approximately how many
guests? A 1554, exactly.

BY MR. CAMPBELL:

Q Just a little louder, Mr. Lesley?, A 1,554.

Q Keep your voice up all the time, please? A Yes.

BY MR. McNISH:

Q Do you know the prices that range in that hotel?

A Yes, sir.

Q What are they? A 20 cents a night and 30 cents.

Q 20 cents a night and 30 cents? A Yes, sir.

Q What was your position in that hotel? A I was em-
ployed as head porter.

Q Head porter? A That night.

Q Speak louder so that the jurymen can hear you?

A Yes.

Q How long have you been employed as head porter?

A For three months.

Q When did you stop? A About the 28th of December, 1908.

Q Now, did you see, or when did you first see this defendant? A On the night of the occurrence.

Q That was on the 11th of March? A Yes, sir.

Q This year? A Yes, sir.

BY THE COURT:

Q That was the first time? A That was the first time, yes.

BY MR. McNISH:

Q Where was the defendant when you first saw him? A In the public toilet of the hotel.

Q Now, the public toilet of the hotel is on what floor of the hotel? A On the main floor, sir. Well, it is immediately above the main floor.

Q As you enter the hotel, how do you get into the hotel? A Off Bleecker street there is a short flight of stairs, eleven steps on the stairs, and you reach the main floor. The public toilet is reached by another short flight of stairs leading from the main floor to the toilet.

Q And when you get up this flight of stairs from the main floor to the toilet, what do you first enter? A You enter

5
a small porch.

Q And approximately how large is that? A Well, I should say four feet square.

Q What if anything is in there? A In the porch?

Q Yes? A Nothing, sir.

Q Well, is that enclosed or is it open? A It is enclosed.

Q From this small room you call a porch, there is a door?

A Two doors, sir.

Q Two doors? A Yes.

Q The door which you enter and another door, or two other doors? A Well, it is one door, and it is a swinging door, you know.

Q A double swinging door? A A double swinging door.

Q Where does that double swinging door lead to? A Into the public urinal.

Q And how large a room is that? A 20 feet square, I should say.

Q About 20 feet square, and is there anything else in that room except the urinals? A Yes, sir, there is chairs, a bootblack stand, the chairs of the bootblack stand.

Q A bootblack stand and urinal? A Yes, sir.

Q But there are no watercloset seats in there? A No, sir, none whatever.

Q How many exits are there to this urinal? A Just the one, sir.

Q Well, the one that you come in from the porch, and is there another door in that? A There is another door leading into the public toilets, but there is no means --

Q Leading into the toilets? A Yes.

Q And what kind of door is that that leads from the urinal into the toilet? A Swinging door, similar to the one leading from the porch into the urinal.

Q When you pass from the urinals into the toilet, will you just describe how that toilet is arranged? A Leading from the urinal into the toilet, there is a corridor.

BY THE COURT:

Q What did you say? A Leading from the urinal into the toilet, there is a corridor, and on the right of the corridor there is a wall; on the left there is three passages, four passages, I should say. These four passages have got toilets on each side of them.

Q They back up against each other? A Yes, sir, exactly, back up against each other.

Q And the closets are in the middle, are they? A There is a passage in the middle, and a man sitting here, has a man behind him, sir (indicating).

Q I see, and opening from above? A And opening from above, yes, sir.

BY MR. McNISH:

Q Now, as I understand, as you walk in the toilet through

7
the door, there is a plain passage right through? A Yes, sir.

Q On this side here, the right side, as you walk in, it is a perfectly plain walk? A Perfectly plain walk.

Q And on the left, there are passages down, and from those passages are the different toilets? A Yes, sir.

Q Now, as you come in the door from the urinals to the left, what is directly at your left as you walk into the toilet? A Immediately on entering the toilet?

Q Immediately on entering the toilet? A The side wall of one of the toilets, that is, a partition, right side partition of one of the toilets.

Q I show you this paper; did you make that diagram? A Yes, sir.

Q And does that, in a rough way, show exactly what the plan of that urinal is? A Yes.

MR. McNISH: I offer that in evidence.

THE COURT: Is that correct?

MR. CAMPBELL: It is a general idea.

THE COURT: It may be marked, if there is no objection.

(Marked People's Exhibit 1).

Q Now, is the floor in the toilet all the same height? A No, sir.

Q Well, where is there a difference in it? A Entering the toilet from the urinal there is a passage. Well, then, in

order to reach one of the toilets, there is a step from the corridor to the level with the toilets.

Q That is, describing this as the corridor (indicating)?

A Yes, sir.

Q That is on a level as you come through there? A Yes, sir.

Q And to go into any of the toilets here, you have to take one step up (indicating)? A Yes, sir.

Q And that floor there, this part is all the same height (indicating)? A Yes, sir, exactly.

Q Now, these toilets, first, there is just one set of toilets there (indicating)? A One set of toilets, yes, sir.

Q And then here in the centre there are two sets? A Yes.

Q With a partition running through the centre? A Yes.

Q And each of these are arranged in the same way? A In the same way.

Q And as a person would sit on the seats on these, they would be back to back if they were using the toilets? A Back to back, exactly.

Q Now, the partitions between the separate toilets, are made of what? A I should say it is pitch pine sheeting.

Q Made of pine, or wood? A They are made of wood, at all events.

Q And what is the height of these partitions? A 7 feet.

Q And do they run to the top? A No, sir.

Q The ceiling is still on further above? A Yes.

Q And do they run to the floor? A No, sir.

Q How high above the floor are they? A Well, about, I should say about 15 inches, a foot or 15 inches.

Q 15 inches from the floor? A Yes, sir.

Q And they rest on what? A On posts.

Q Now, the partition that runs through the middle separating them -- A Yes, sir?

Q How high is that partition, is it the same height as the others? A Possibly two or three inches higher.

Q About two or three inches higher? A Yes, sir.

Q And how low does that run down? A To within a foot, 15 inches of the ground.

Q The same distance from the ground as the other?

A Yes, sir.

Q And that is made of wood also? A Yes, sir.

Q Now, in front of these are other doors? A Yes, sir.

Q And what kind of doors? A Wooden doors.

Q Are they solid wood? A Yes, sir.

Q Or are they flat doors? A Well, I should say they are about an inch thick. That is, the sheeting in them is about an inch thick.

Q And how large are these doors, how high are they from the ground? A Well, about three feet.

Q About three feet from the ground? A Yes.

Q That is, they are that high (indicating)? A Well, yes --, no, not quite that high. High enough, if you stand in front of the toilet, they are high enough to see up to a man's knees if he should be sitting inside of the toilet.

Q And how high are they at the top? A Well, they are about 2 feet. Well, I cannot --

Q The door is about 2 feet, you mean? A Yes, 2 feet high taking it that way (indicating).

Q Well now, just stand up, and tell us, if you were standing in front of one of those doors, tell us about where the door would come to? A The top of the door, sir, would come to about here (indicating).

Q Where would the bottom of the door be? A About here (indicating).

BY THE COURT:

Q About to your knees? A About a little above my knees.

BY MR. McNISH:

Q Then about what is the space between the toilets?

A The width of the corridor.

Q The width of the corridor that runs in between them?

A About between 3 to 4 feet.

Q Now, this partition between the toilets, how are those built, that kind of partitions are they; you said they were wood? A Yes, sir.

Q Now, are they solid wood, or how? A They are panels.

Q How many panels are there? A Four.

Q And about what is the size of the panel? A I should say about 15 inches by 2 feet. 2 feet long by 15 inches high.

Q Well, what first attracted your attention to the defendant on March 11th? A I entered the public toilet and I noticed that Duffy, the man who was working with me, had climbed up on one of the partitions between the toilets, and was evidently observing something that was going on underneath him.

MR. CAMPBELL: I move to strike out "evidently observing something going on", and so forth.

THE COURT: Yes, that may be stricken out.

Q Just tell us exactly what you saw and do not give us any of your deductions? A Yes.

BY THE COURT:

Q You saw Duffy, you say? A Yes, sir.

Q Who is Duffy? A The man that was working with me.

Q Employed by the hotel? A The Mills Hotel, yes, sir.

BY MR. McNISH:

Q What time of day or night was this? A Ten minutes to nine at night.

Q Ten minutes to nine in the evening? A Yes, sir.

Q Now, in which one of these toilets was Duffy at the time you first saw him? A Exactly there, sir (indicating); where my finger nail is.

Q Just about, or just putma cross there, where the toilet is in which Duffy was? A (Witness indicating) Up on top of that partition where the "X" is.

Q He was on top of that partition? A Yes.

Q And what if anything did Duffy do? A I was going into the toilet and he motioned to me, that way, to keep back (indicating).

Q What did you then do? A I went down to the main office and brought Mr. Sweet up, the manager.

Q Mr. Sweet is the manager, and was at that time manager? A Well, he is assistant superintendent, but that night he was acting as manager.

Q Acting manager? A Yes.

Q And you went down and spoke to Mr. Sweet? A Yes, sir.

Q Then what occurred? A Mr. Sweet returned with me to the public toilet.

Q And when you went into the public toilet, what if anything did you see then? A Still saw Duffy.

Q Where was Duffy when you saw him? A Exactly where I left him, on the top of that partition.

Q And in which direction was Duffy towards, which was his face towards, which way? A Facing this way (indicating).

Q Facing out that way? A Yes.

Q Then, tell us what occurred? A Duffy motioned to me, to Sweet and myself, to keep back, exactly the same way as he

motioned to me previously, but then after perhaps a minute's pause he motioned to us to open the doors, the doors immediately underneath where he was concealed.

Q Yes? A We did so.

Q Now, where did you go, what door did you open? A (Witness indicates on People's Exhibit 1) I opened that one.

Q Now, just tell us --

MR. CAMPBELL: What is that?

MR. McNISH: That is this door (indicating).

Q Now, just tell us what, if anything, you saw when you opened the door? A Inside of the toilet there was a man in a half sitting, a half crouching posture, in a position --

Q Do you know who that man was? A He afterwards gave his name as Daily.

Q Yes, all right; go on, describe it? A In the panel that separated the toilet, his toilet from the one in which this man was found, there had been a hole cut, a hole in a triangular shape.

Q Describe that hole to us, how large was it? A About 6 inches by 3; 5 inches by 3, perhaps.

Q Well, you say it was triangular in shape? A Yes.

Q Well, cannot you show us with your hands? A (indicating) about that size.

Q And what was the height of that hole? A 5 inches.

Q The hole was about 5 inches in height? A Yes.

Q And the base of it was about how much? A About 3 inches.

Q And how high from the floor was that hole? A 18 inches. From the floor?

Q From the floor, about how high? A 3 feet, sir.

Q About 3 feet? A Approximately 3 feet.

Q And in which panel was that hole? A The second panel from the bottom.

Q Counting from the bottom, it was the second? A Counting from the bottom it was the second panel.

Q Now, go on and describe what you saw there? A This man, as I say, was sitting in a crouching posture. He had his mouth to this hole, and I could plainly see that, protruding from the hole, there was what I took to be a man's private part, and he had this private part in his mouth. When the noise that I made by opening the door, of course, attracted him, he stood up. I took him out of the toilet then.

Q Now, was he sitting on the seat of the toilet at the time you saw him? A No, sir. May I show you?

Q Yes? A He was like that (indicating).

Q And his face was close against, near the partition?

A Yes, sir. Close against, yes, sir..

Q When you opened the door he stood up?, A Yes, sir.

Q Were his clothes fastened or unfastened? A Unfastened.

Q And what if anything did you say? A I said, "Well, you are caught in the act."

MR. CAMPBELL: I object to this.

BY THE COURT:

Q Whom was this said to? A To Daily.

THE COURT: I will exclude it.

BY MR. McNISH:

Q Where was the defendant at that time? A In the next toilet, sir, in the next toilet to the one I opened.

Q And did you speak in a loud voice or not, to Daily?

A I spoke, well, in a voice that I could be heard for say 20 feet either way.

MR. CAMPBELL: I move to strike that out as a conclusion.

THE COURT: Yes, strike it out.

Q Well, Daily fastened his clothes? A Yes, sir.

Q And came out? A Came outside.

Q And when Daily came out, where was the defendant then?

A Inside, in the toilet, in the next toilet to where Daily had been.

Q The next toilet; in this toilet (indicating)? A Yes, sir, exactly.

Q And who else was there? A There was no one in the toilet, but at the door Mr. Sweet was standing?

Q And what if anything was said then in the presence of

this defendant, that you remember, if anything was said?

A Mr. Sweet left the toilet to go down to get Mr. Thomas, and this defendant -- do you mean what he said to me?

Q Anything that was said there while he was present and could hear it? A He said to me, "My God, man, this is the first time I have ever been caught with anything like this." I said "You can tell that to somebody else; it is none of my business."

Q Anything else said? Tell us everything that was said?

A Then there was only Duffy and myself in the toilet, and I thought that --

MR. CAMPBELL: Objected to

Q Never mind what you saw. Just tell us what occurred?

A There was only Duffy and myself in the toilet, and I said that there was no use in trying to get out or to break past us. That was all that was said until Mr. Thomas arrived.

BY THE COURT:

Q This conversation was with the defendant? A Was with the defendant, yes, sir.

BY MR. McNISH:

Q Then what occurred when Mr. Thomas arrived? A Mr. Thomas asked me, if I considered it advisable --

MR. CAMPBELL: I object to this unless said in the presence of the defendant?

THE COURT: Yes, unless said in the presence of the

defendant.

A (Continuing): It was in the presence of the defendant.

BY THE COURT:

Q And in his hearing? A And in his hearing.

Q All right, go on? A Mr. Thomas asked me if I considered it advisable to get a policeman, and he then sent out for a police officer.

BY MR. McNISH:

Q Well, did the police officer arrive? A Yes.

Q And did he place the defendant under arrest? A Yes.

Q Where was the defendant when he placed him under arrest?

A In the corridor leading to the toilet where we found him.

Q That is, out here (indicating)? A No, in this corridor here (indicating).

Q Right in front of the toilet that he had been in?

A Yes, with his back up against the wall?

Q You waited right there until the officer came in?

A Yes, did not let him out of there.

Q And placed him under arrest? A Yes.

Q When you first saw the defendant, after you had seen what you describe concerning Daily, what was the condition of the defendant, as to his clothing? A His trousers were unbuttoned, as much unbuttoned as a man's --

Q Never mind characterizing it. His trousers were unbuttoned? A Yes, sir.

Q And were they pulled up or just unbuttoned in front?

A No, sir, they were half down, down over his hips.

CROSS-EXAMINATION BY MR. CAMPBELL:

Q Where were you employed before you went to the Mills Hotel? A Boston & Maine Railroad, in Boston, Massachusetts.

Q How long were you employed by them? A Four months.

Q Why did you leave there? A I left there because business was bad in the railroad business.

Q Were you discharged? A Yes, sir.

Q Where were you employed before that? A The Canadian Pacific Railroad, Montreal, Canada.

Q How long were you there? A Seven months.

Q Were you discharged by them? A No, sir, I left of my own accord.

Q You had been employed at this time by the Mills Hotel as porter? A Yes, sir.

Q Are you married? A No, sir.

Q Do you live right in that hotel? A I beg your pardon?

Q Do you live right in the hotel? A Yes, sir.

Q What are your wages there? A \$20 a month.

Q And board? A Room and board, yes.

Q \$20 and room and board? A Yes, sir, and room and board.

Q Now, assuming this -- I show you this little sketch, look at that; assuming this to be the corridor as indicated on

the sketch, and this to be the aisle as indicated on the sketch, and this to be the last two toilets at the left side of the aisle, is that a fairly accurate reproduction of the lay of that aisle and the toilet in which you say you found the defendant Chard and this man Daily? A Well, yes, except that there are other toilets here.

Q Yes, I have not filled those in? A (No answer).

BY MR. McNISH:

Q The last two are all he asks about? A The last two, yes.

BY MR. CAMPBELL:

Q I just want to get the last two toilets larger than they are on your sketch, is that so, that is a fairly accurate sketch, is it? A Yes.

MR. CAMPBELL: I offer this in evidence.

No objection. (Marked Defendant's Exhibit A).

THE COURT: The object, I take it, is to illustrate the testimony?

MR. CAMPBELL: Yes, sir; that is all.

Q Where did you say that you were when you first saw the defendant Chard on the night of March 11, what part of this toilet? A Immediately in front of the door here, leading into this toilet (indicating).

Q All right. Make a letter "A".

(Witness indicates).

Q At the time that you first saw Chard, where was Duffy?

A Immediately behind Mr. Sweet, who was in front of the toilet.

Q In the same corridor? A Yes, sir, there (indicating).

Q Put a "D" where Duffy was and "S" where Sweet was?

A (Witness indicates).

Q Now, hold it up so that we can see it, please?

A "D", "S", "A", and this was myself (indicating).

Q Now, before you saw the defendant Chard you had seen Duffy, you say, on the top of the partition? A Yes, sir.

Q Describe how Duffy was placed on the top of that partition? A He was hold on like that with his hands (illustrating). He had climbed up to the top of the partition and was holding on.

Q Was he holding himself up there by force of his arms, or was he standing on something, or couldn't you see?

A Standing on a toilet paper machine and holding himself up with his elbows more like that (indicating).

Q Will you put the letters "T. P." on the toilet in which the toilet paper machine was on which Duffy was standing? Hold it up so that we can see? A (Witness indicates).

Q Duffy was supporting himself partly by that toilet paper machine, and had his hands on the partition between the two toilets?

A On this partition (indicating).

Q Just make two little "x's" where he had his hands? (Witness indicates).

Q Hold the paper up, please? A (The witness indicates).

Q Now, will you take or will you show on this diagram People's Exhibit 1 where you stood when you saw Duffy in that position? A (Witness indicating) Right there.

Q "Li" in a circle indicates the position? A Yes.

Q Where you stood at the time you saw Duffy hanging over this partition? A Yes, sir.

Q How much of Duffy's body could you see as you stood at that spot? A From his waist up.

Q You are sure you could see from his waist up, standing in that position? A Well, from about here, I could see (illustrating).

Q There were other partitions and toilets all along between you and Duffy, weren't there? A Yes, sir.

Q And these toilets are higher than a man's head, aren't they, the tops of them? A Yes.

Q How many toilets higher than a man's head were between you and Duffy when you saw him, as you say, from his waist up? A Three.

Q Three toilets? A Yes.

Q You stood out in the main corridor, didn't you? A Yes, sir.

Q What is the distance in inches between the top of the partition of which you say Duffy had hold with his hands, what is the distance in inches between the top of that partition

and the ceiling? A 15.

Q 15 inches? A Yes, sir.

Q Duffy did not have his head over the partition, did he?

A Yes, sir.

Q He had his head over the partition? A Yes, sir.

Q Now, where was Duffy's head, indicating on Defendant's Exhibit A where Duffy's head was, and face, as he looked over the partition? A What mark will I put on it, please?

Q Put on "D. H." for the place where Duffy's head was?

A (Witness indicates).

Q Right there? A Yes.

Q Then, his head was on the same side of the partition on which he stood? A Yes, sir, of course.

Q Now, then, indicate on Defendant's Exhibit A where the flush box is in the partitions? A On this particular partition where Duffy was?

Q Yes, and on the other partitions, locate the flush box on all these four toilets? A (Witness indicates by "F. B.")

Q Now, the flush box extends up higher than the dividing partition, doesn't it? A Yes.

Q How high is the flush box, how deep? A Ten inches.

Q Ten inches, so that between the flush box and the ceiling there is only a distance, the top of the flush box, and the ceiling, is only a distance of approximately 5 inches? A Yes, sir.

Q The toilet paper machine was where that ink is, attached to the side of the toilet there, isn't it? A Yes, sir.

Q With the "T. P." inside the little square? A Yes, sir.

Q Now, is this partition between the partition which runs along at the backs of the toilets, is that higher than the partitions between the toilets along the aisle? A Yes, sir; it is.

Q How much higher? A 3 or 4 inches.

Q Now, it is impossible for a man standing in any one of these toilets to see over the partition into the next toilet, is it not? A Oh, yes, impossible.

Q As you enter the toilet itself from the aisle, is there a step up? A Yes.

Q And also a step as you go from the corridor into the aisle? A No, sir, from the aisle into the toilet?

Q From the main corridor as you turn into the aisle, is there one step up? A Yes, one step up.

Q And then, as you turn from the aisle again into the toilet, there is another step up? A No, sir; there is no step up there.

Q They are on the same level with the aisle? A They are on the level with the aisle.

Q Now, the doors in these toilets are wooden doors, aren't they? A Yes.

/ Q There is no fastening on them, no lock? A No lock.

Q They swing? A They swing.

Q There are slats, aren't there, in the doors? A Yes.

BY THE COURT:

Q No bars to lock them? A No, bars to lock them, no.

BY MR. CAMPBELL:

Q The bottom of that swinging door is about 2 feet high from the floor, is it not? A Yes, sir, more than 2 feet.

Q And the door itself is about between 4 and 5 feet wide, isn't it, just the door part? The door that swings, the door itself, is not that from the bottom to the top of it about between 4 and 5 feet? A Yes.

Q So that the top of that door is from 6 to 7 feet high from the floor? A 6 to 7 feet high from the floor? No.

Q Yes, the top of the door going into the toilet? A No, sir, it is not.

Q Well, then, where are your measurements incorrect?

A The top of the door is about 5 feet 6 inches from the floor, from the floor of the aisle.

Q Can you stand in that aisle and look right over the top of the door into any toilet? A Yes, sir.

Q It was not, however, until you opened the door in which you saw man Daily, was it, that you saw that you have described Daily's doing? A No, sir; not until I opened the door?

Q You could not see it until you opened the door, could

you? A I could not see as far as he was down.

Q How tall are you? A 5 feet 11, between that and 6 feet.

Q And couldn't you, if that door, the top of it is only 5 feet 6 inches, couldn't you walk right up to that door and look right over the top and see everything that happened inside?

A Yes, but I would want to crane my neck --

Q Couldn't you, couldn't you? A No, I could not.

Q What is to prevent it, your desire not to crane your neck? A No, but I am not tall enough, in the first place.

Q That is the best answer you can give to that question?

A You ask me if I can see into the toilet standing --

Q I am asking you if the top of that toilet, the door is only 5 feet 6 inches from the floor of the aisle, whether it is not possible for you without opening the door to walk up to and look in there and see everything that is inside that toilet? A It may be. I never tried it.

Q You did not try it that night? A No, sir, I did not.

Q Now, after you were in there and saw Duffy with his hands on the partition, you went back into the main part of the hotel to get Mr. Sweet? A Yes, sir.

Q How long were you gone? A About half a minute.

Q How long had you been in the toilet before you saw Duffy on the partition? A Ten seconds.

Q How long before you saw Duffy on the partition had you seen him elsewhere? A Half an hour, I should say.

Q You and Duffy did not go in that toilet together that night, did you? A No, sir.

Q What were you doing that night, what work were you doing? A I was employed at the main entrance to the hotel.

Q And you left -- your duties require you to be at the main entrance, out front? A No, sir, not exactly. My duties require me to be in any part of the house at any time.

Q But that particular night you were employed out front, weren't you? A On the front of the house, yes. That is where I am to be found when I am not employed elsewhere.

Q How long were you gone after Mr. Sweet? A Do you mean between the time I left --?

Q After you saw Duffy on the partition? A Half a minute.

Q And did you precede or did Mr. Sweet precede you into the toilet? A I preceded him slightly.

Q And you went right around to the front of the toilet in which these men were found? A No, sir, we did not.

Q Where did you go? A We stood where I had stood the first time I saw Duffy.

Q How long did you stand there? A Possibly half a minute.

Q And then, after Duffy made a signal of some kind or motion, you went around in the front of the toilet here (indicating)? A Yes, sir.

Q Who was it that opened the door of Daily's toilet?

A I did.

Q Daily was sitting on the seat, was he? A No, sir, he was crouching. His body merely touched the seat; he was not sitting on it.

Q How high from the floor is the hole between these partitions? A That high (indicating).

Q And at that time when you opened the door, did you open it inward or outward? A Like that (indicating); pulled it to me.

Q Pulled it to you? A Yes.

Q And Daily had his face pushed right close up to that hole, did he? A Well, there was a space of about an inch, I should say.

Q Just indicate now on this diagram -- Daily was in the end toilet, wasn't he, where I write "Daily"? A Yes.

Q And Chard was in the toilet next to him? A Yes.

Q Indicate where the hole is there in that? A That was the partition.

Q Yes? A It is about the centre, the second panel up.

Q That is the hole right there (indicating)? A Yes.

Q Now, how far away from the partition --

MR. CAMPBELL: Question withdrawn).

Q Now, indicate just exactly where you stood when you saw Daily with his face at the hole with the letter "V"?

A (Witness indicates).

Q Indicating by the letter "V" in a circle. How far away from the hole did Daily have his face at that time? A An inch, an inch and a quarter.

Q An inch or an inch and a quarter away from the hole?

A Yes.

Q And you could plainly see a penis sticking through the hole? A Yes, sir, plainly.

Q You could? A Yes.

Q What did you do when you opened that door; did you take hold of Daily? A The first thing I did, I said --

Q Not what you said; what did you do? A I pulled him out of there.

BY THE COURT:

Q Pulled whom out? A Daily.

BY MR. CAMPBELL:

Q Pulled Daily out? A Yes.

Q Where did you pull him to, right out in the aisle?

A Into the doorway.

Q Did you leave him then in the doorway? A Yes, I kept my hand on him and stood there with him.

Q Up to this time, the door of Chard's toilet had not been opened? A Yes, sir; it had.

Q Did you see that opened? A Yes.

Q When was Chard's doorway opened? A Simultaneously with mine being opened, at the same time.

Q You opened Chard's doorway? A Mr. Sweet.

Q You did not see what happened in Chard's toilet when Sweet opened the door, did you? A Yes, sir.

Q Although you were engaged in hauling Daily out of his toilet, you were able to see what was happening in Chard's toilet, were you, at the same time? A Well, I did not haul Daily out. I did not pounce on him the moment I opened the door. I waited to take a good view of things.

Q How long did you wait taking that view of things?

A About a minute.

Q You stood there and watched that a minute, with the door opened before you took hold of Daily? A Well, something less than a minute.

Q How much less? Did you wait ten seconds before you took hold of Daily? A Yes, I did.

Q Ten seconds? A Yes, sir.

Q Who did you say opened Chard's door? A Mr. Sweet.

Q Did you pull Daily out before or after Mr. Sweet went into Chard's toilet? A Mr. Sweet did not go into Chard's toilet: He opened the door of Chard's toilet.

Q At the same time that you opened your door? A Yes, sir, at the same time.

Q Now, which way does the door swing of these toilets?

A To the right.

Q Now, I refer to Daily's toilet, as you stand in front of Daily's toilet, here, this door swings around this way, or does it swing around this way (indicating)?? A This being Daily's toilet, here is the handle, and it swings this way (indicating).

Q Swings around towards the left, from left to right?
A From left to right.

Q In the direction that that arrow is pointing (indicating)? A In the direction of the arrow.

MR. CAMPBELL: You understand that, gentlemen of the jury? From left to right.

Q The hinge is on the right hand side of the door?
A The hinge is on the right hand side of the door, facing into the toilet.

BY MR. McNISH:

Q The right hand side facing the toilet? A As you enter the toilet the hinge is on the right hand side.

BY MR. CAMPBELL:

Q Now, when you opened this door, Sweet simultaneously opened Chard's door? A Yes, sir.

Q And you stood where you have indicated? A Yes, sir.

Q And you looked right into that toilet? A Yes, sir.

Q Was it after Daily was pulled out into the hall or before, that you say you had this conversation with Chard?

A After he was pulled out in the hall.

Q Had Sweet gone at that time? A No, sir.

Q Sweet heard Chard make this statement, did he? He was within hearing distance? A Well, he was within hearing distance.

Q How many feet away was Sweet when Chard made the statement? A Away from Chard?

Q Yes? A Four or five.

Q And how many feet away from Chard was Duffy when Chard made this statement? A A similar distance, four or five feet.

Q Now, just what was it again that Chard said? A He said, "My God, man, this is the first time I have been caught at anything like this."

Q Yes? A And I said "You can tell that to some one else; it is none of my business."

Q Now, you testified in the Police Court, didn't you? A Yes, sir.

Q You were asked there, weren't you, whether you had any conversation with Chard?

MR. McNISH: I object to the question and the form of it.

THE COURT: I will take the question.

Q Weren't you? A Yes, sir; I was asked --

Q Did you give that conversation anywhere in your testimony in the Police Court? A I can't remember.

MR. McNISH: Objected to.

THE COURT: Have you the testimony? You had better

refer to it.

BY THE COURT:

Q If you have any recollection, you may answer? A I cannot say truthfully whether I did or not.

BY MR. CAMPBELL:

Q Don't you know as a matter of fact, as you sit in that chair, that you did not say anything like that in the Police Court? A I do not. If I knew that I would say so.

Q Now, have you told all the conversation that you had with Chard when you had him out in the hall? A As much of it as I can recollect.

Q Did you tell Chard that he could get 20 years for this? A No, sir; I did not.

Q You did not say anything like that? A No, sir?

Q Did you tell Chard that he could fix this thing up with a \$20 note? A No, sir; I did not.

Q You are sure about that? A Absolutely positive, no.

Q You say that sometime after the statements by Chard, and when Chard and Daily stood out in the corridor, somebody came up, Mr. Thomas, was it? A Mr. Thomas.

Q And Mr. Thomas asked you whether you thought it would be advisable to send for an officer, did he? A No, sir, he did not. Mr. Sweet asked me if I thought it would be advisable.

Q Advisable to send for an officer? A Yes.

Q

Q And you told him you thought it would be? A Yes, sir.
I did.

Q Is it not a fact that there have been a number of cases in that hotel within a comparatively short time, where men have been found in these toilets and you have been asked the same question, and you have said it was not advisable to send for a policeman? A No, sir; I have not been asked anything of the kind.

Q How many men have been detected in those toilets, or had been detected within a period of say a month previous to the time when you claim you caught Chard in that act, who were not arrested and taken to court?

MR. McNISH: Objected to as incompetent, immaterial and irrelevant.

THE COURT: How is it relevant, counsel?

MR. CAMPBELL: It shows motive, and it goes to the truth of what we are going to claim in this case, that this was an attempted hold-up on the part of this witness. I want to show that they claim up there that they had arrested or caught 25 or 30 men, and that not one of them has ever been brought into court.

THE COURT: What difference would that make with reference to this accusation and this charge? If they had been neglectful and negligent and had not performed their duty in other cases, what relevancy would it have to this accusa-

tion?

MR. CAMPBELL: In this accusation, the conversation which we shall allege in which this witness said that the defendant Chard could fix this thing for \$20, is part of the res gestae. Now, then, if these others have been fixed for \$20, or less or more than \$20, it goes to the truth or falsity of this accusation.

THE COURT: The objection will be sustained.

MR. CAMPBELL: I take an exception. I will put the question, then, in another form.

BY MR. CAMPBELL:

Q How many men have been detected in that toilet within a period of four weeks prior to the time that Chard was pulled out of that toilet, engaged in the same practice which you say Chard was engaged in that night?

Objected to. Objection sustained. Exception.

Q You say you opened one of the doors and Sweezy opened the other? A Yes, sir.

Q Do you remember being asked this question in your examination in the police court: "Did you open both the two doors? A Simultaneously." Were you asked that question and did you give that answer? A No, sir, I may have been asked were both doors opened, and how much space intervened between the opening of one door and the opening of another.

Q Were you asked this question: "Q What did you do?"

A I stood there at tge corridor; the toilet is in the corridor; I stood at the corridor and Duffy motioned to me to open the doors." Did you give ay such testimony as that in the Police Court? A Yes, sir, I did.

Q Then the next question and the next answer: "Did you open both the two doors? A Simultaneously." A I don't remember saying that I opened both doors.

Q You can read this testimony and refresh your recollection, if you like?

THE COURT: No, no. He need not. You may ask him any questions you think proper.

Q What is your answer to that? A I don't remember saying that I opened both doors.

Q As a matter of fact, you did not open both doors, did you? A No.

Q When you opened the doors, or when the doors were opened, whichever it is , at the same time, that you say --

MR. McNISH: I object to the form of the question. We have the evidence as to how it was.

THE COURT: Go on with your question.

Q When you saw Daily in the position you have described, with his face to the hole, could you at that same time see the defendant Chard? A Yes.

Q You could see both sides of that partition? A Yes.

Q Just tell us how you could see both sides of that parti-

tion? A I swung the door like that (illustrating), held it out at arm's length, and stood back, and I intended --

Q Referring to the door of Daily's room? A Yes.

Q Yes? A And stood back at arm's length, and stood in such a way that the door of the other toilet did not come between me and this defendant.

Q You stood when you opened the door, you told us where you have indicated this to be? A Yes.

Q And you could see the other defendant in this toilet when you stood there, with this door opened and the door of Chard's toilet open, could you? A Yes.

Q Where did you see Chard standing when you stood in that position?, A Standing with his stomach pressed up against the partition, between his toilet and Daily's.

Q Right close up here (indicating)? A Yes, right close up there.

Q Now, when you saw that, did you see over this door, or through the wooden partition, or see around the corner? A I saw around the corner.

Q You could see around this corner? A I could see around that corner.

Q Over the top of the door or through it? A The door was standing like that, in front of me; I was holding my own door at arm's length, like that (illustrating); I looked around like that and I could see plainly this man standing with

his stomach pressed against the partition.

Q And was this door swung clear back in front of Dally's place, or how? A No, not clear back.

Q Just at the time you saw that, please take this men and show how far this door was swung out, the door of Chard's room; draw a straight line and show the exact situation of Chard's door when you saw what you have told us? A (The witness indicates).

Q How wide is the door from the hinge to the front of it; the width of the door? A Two feet and a half.

Q How long did this defendant Chard remain in that position after the door was opened? A About 30 seconds.

Q How long had that hole been between those two toilets? A I don't know.

Q How long have you been porter there? A Three months.

Q You have been in the toilets frequently, haven't you? A No, I can't say that I have been in the toilets, that is, in the different compartments of the toilet.

Q There were other holes between the various other toilets there, weren't there?

MR. McNISH: I object to that as immaterial.

THE COURT: Overruled. I will take it.

Q Weren't there? A Yes, as far as I know there were.

Q How long had these holes been allowed to stay in that condition?

Objected to as immaterial. Objection overruled.

A How long?

Q Yes? A How long?

BY THE COURT:

Q If you know, how long had they been there, from your experience and observation? A Well, they have been there as long as I have been there.

BY MR. CAMPBELL:

Q Werethey left there to promote business?

Objected to. Objection sustained.

Q Did you derive a profit ou of leaving these holes in your partitions? A No.

Q You did not? A No.

Q But after the very first case in which the matter was brought to the attention of the head authorities, those holes were covered over with tin, weren't they?

MR. McNISH: Objected to as incompetent, immaterial and irrelevant. It does not appear when the very first case was brought to the attentiono f the authorities there.

MR. CAMPBELL: Question withdrawn.

Q How soon after the defendant Chard was arrested, were the holes covered up, every one of them, with iron or tin?

A I don't know. I know they have been covered.

Q Very shortly, weren't they? A I don't know how shortly.

Q Well, within a day or two? A No, sir, not within a day or two.

Q They are covered over now? A They are covered over now, but that is a month ago.

Q They were covered over quite a long time ago, weren't they? A No, sir, they were not.

Q Weren't they covered over two weeks ago? A Not as far as I know. Nearly two weeks, but I should not say it was quite two weeks.

C H A R L E S D U F F Y, being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. McNISH:

Q Duffy, where do you work? A The Mills Hotel.

Q At what number? A 163 Bleecker street.

Q How long have you worked there? A About three months.

Q Will you raise your voice? Speak so the last juror can hear you? A Three months.

Q What is your position there? A As porter.

Q And has it been porter all the time you have been there?
A Yes, sir.

Q Has that been your position? A Yes, sir.

Q You worked under John Leslie? A I worked under Mr. McArdle; he is manager there.

Q John Leslie was also a porter there? A Yes, sir.

Q Do you know this defendant?^a A Well, yes, I know him, I saw him down at the Mills Hotel, that night.

Q Well, did you ever see this defendant, so far as you know, until the 11th of March? A No, sir.

Q What you know about him has all been gained since that time? You were never personally acquainted with him, were you? A No, sir.

Q When on the 11th of March did you first see this defendant, what time of day? A It was about ten minutes to nine.

Q In that evening? A Yes, sir.

Q And where was the defendant when you first saw him? A He was in the toilet in the Mills Hotel.

Q And which, or what part of the toilet was he in? A He was in one of the booth:

Q He was in one of the booths in the toilet? A Yes, sir.

Q What, if anything, attracted your attention to the defendant? A I had noticed one man sitting in there a good while. I came back later and I found two men in there, and then I had noticed them whispering to each other.

BY MR. CAMPBELL:

Q Wait a minute. Who were the men whispering to each other? Was this defendant one of them? A I could not say as to that.

MR. CAMPBELL: Then I move to strike out this testimony

as not related to this defendant.

A (Continuing): I was looking from the top of the toilet.

THE COURT: It does not affect your client, counsel.
It has no bearing as against your client.

MR. CAMPBELL: No, that is the reason I move to strike it out.

THE COURT: I will let it stand. I will state to the jury that it does not affect your client.

MR. CAMPBELL: I take an exception.

BY MR. McNISH:

Q Did you find out who the men were that were whispering together? A No, sir, I was on top of the toilet and I could not see their faces at that time.

Q Now, on top of what toilet were you? A I was on top of the toilet, inside, the operator.

Q Well, I will show you a diagram; do you understand what that diagram shows? A Yes, sir.

Q This is the urinal there, and this is the walk, and these are the toilets (indicating)? A Yes, sir.

Q Along there? A Yes, sir.

Q Now, where were you there? A I was right on top of the toilet of the operator.

Q On top of what? A Right on top of the booth of the operator, on top.

Q Who is the operator? A Why, it looked to me like

Mr. Frank Daily.

Q Like Daily? A Yes, sir.

Q Well, did you see the defendant at this time? A Well, I saw -- I could not see their faces.

Q Well, you saw a man there, didn't you? A Yes, sir.

Q Well, did you afterwards find out who it was you were looking at? A Well, I was noticing -- yes, sir, I afterwards found out who it was.

Q Well, who was it you were looking at? A I was looking at -- when I -- I did not see these men face to face until after they got out of the toilet.

Q And then you saw this defendant, did you? A Yes, sir.

Q And was this defendant inside the toilet or outside when you saw him? A He was outside.

Q Outside of what toilet, in reference to the one that you were looking over at the top? A Well, I could not say as to that. He was out in the aisle.

Q He was in the aisle? A Yes, sir.

Q Now, tell us what your position was in the toilet? A I was right on top of it.

Q Well, were you looking over the partition? A Yes, sir.

Q And how were you standing in the toilet? A Well, I was standing on where the paper is held, and standing where the paper was held.

Q Standing on where the paper was held? A Yes, standing on.
ing on.

Q And looking over to the toilet on the other side?
A Yes, sir.

Q What, if anything, did you see? A Well, I saw them
whispering there, and all at once I saw one of the men stick
his penis through the hole. Then he pulled it back again;
then he stuck it through again, and this other man put it in
his mouth.

Q Did you see anybody else there in the place at the
time? A Mr. Sweet and John Leslie were just right back of
me, and I was motioning to them. I was waiting until they
started. They did not start for awhile, and I waited, and as
soon as they started I motioned for them to go around. Then I
got down and went around and they was out in the aisle at the
time.

Q When you got down, you went around in the aisle, and
whom did you find in the aisle? A I found this man and the
other man.

Q You found this defendant? A Yes.

Q And the other man? A Yes.

Q Have you since learned who he was? A Frank Daily.

Q Who else was there? A Mr. Sweet and John Leslie.

BY THE COURT:

Q You did not see either one of their faces until you saw

them outside? A No, sir.

Q And you saw two men in the position that you have described? A Yes, sir.

BY MR. McNISH:

Q Now, before you got up on the --

THE COURT: Gentlemen, you must not discuss this case, nor form nor express any opinion about it, but keep your minds open and free until it is submitted to you.

I will ask you to be in your places promptly at two o'clock.

(Recess until two p.m.)

(After recess).

TRIAL RESUMED.

CHARLES DUFFY, a witness for the People, resumes the witness-stand.

DIRECT EXAMINATION CONTINUED BY MR. McNISH:

Q Before you got up on the partition, had you seen this defendant? A No, sir.

Q Had you had any conversation with Leslie? A Yes, sir; I told him that I thought --

MR. CAMPBELL: Never mind what you told him.
BY MR. McNISH:

Q Never mind that, what you told him; you had a conversation with Leslie? A Yes, sir.

Q How long before you got up on the partition was it that you had the conversation with Leslie? A About fifteen minutes.

Q Where was it you had the conversation with him? A On the main floor.

Q And after that, you went up directly, did you, and got on this partition? A Yes, sir.

1

CROSS EXAMINATION BY MR. CAMPBELL:

Q Now, when you went in this toilet, when you were up on this partition, you got up on this toilet paper bracket ?

A Yes, sir.

Q And when you saw what you have described to us, you had one foot on this bracket and your hands on the top of the partition, is that right ? A Yes, sir.

Q That was the way you held yourself up there, so that you could see over ? A Yes, sir.

Q Now, the boxes, the water tanks in these partitions, are right in the middle, aren't they, of the toilet, at the top of the toilet? A Yes, sir.

Q Which side of the water tank did you have your hands when you saw what you have described on this day, on this side (indicating) ? A Which side ?

Q Yes. A I was on this side (indicating).

Q That is to the left of the toilet in which you were ? A Yes.

Q So you put your hands on this side ? A Yes, well, I could see over on both sides.

Q You could see both sides of this partition? A Yes, sir.

Q At the time you did so see, you had one foot on this toilet? A Yes, sir.

Q Of the toilet paper bracket? A Yes, sir.

Q How tall are you, stand up, please; about how tall are

2

you? A About five feet, ten inches, something like that.

Q You are not over 5 feet 8, are you? A Something like that.

Q About 5 feet 8? A Yes, sir.

Q Do you know the distance in width --

BY THE COURT:

Q (Interposing) Well, which is it, 5 foot 8 or 5 feet 10?

A 5 feet 8.

BY MR. CAMPBELL:

Q Do you know the distance in inches from this toilet paper bracket to this corner of the toilet at the top of the partition? A I don't understand your question.

Q Do you know the distance from this toilet paper bracket to this corner of the toilet in which you were at the top of the partition? You had to reach slanting ways, diagonally across that toilet, didn't you, to reach that corner?

A Yes, sir.

Q How many inches is it across there? A I don't quite understand your question.

Q You understand that when you were in this toilet with one foot on this toilet paper bracket, reaching over?

A Yes, sir.

Q Aro und this tank? A Yes.

Q With your hands on the top of this partition? A Yes.

Q That you had to reach diagonally across that toilet?

3

A Yes, sir.

Q I am asking you how far it is from this toilet paper bracket over to this corner of the toilet at the top of the partition? A Well, it is about 5 or 6 inches.

Q 5 feet, isn't it? A 5 or 6 inches.

Q You don't understand the question. It is about 5 feet from the top of this toilet paper bracket over to this corner of the toilet, at the top of the partition, isn't it? A No, sir.

Q How far is it? A The height of the toilet is only about 7 feet.

Q How great a distance would you call that from there to there (indicating)? Would it surprise you if I told you that it measured 57 inches, between 1 and 2 o'clock to-day?

Objected to. Objection sustained.

Q Is it not 57 inches from the top of this toilet paper bracket, this corner of the partition, at the top of the partition? A I would think it would only be about 15 feet. You mean how wide is the booth?

Q How far is it from that point -- can't you understand that question? The top of this partition, is how high from the floor? A (No answer).

BY THE COURT:

Q He is asking you, Mr. Witness, for your judgment upon the subject. Give him your best judgment. A It is about 7 feet.

BY MR. CAMPBELL:

Q 7 feet across there ? A No, sir, 7 feet from top to the bottom.

Q Now, how far is it from the top of this toilet paper bracket, from that fixture on which you stood, how far is it in a direct diagonal direction, across to this corner of the toilet, at the top of that partition? A Well, it is about 3 feet.

Q Only three feet ? A Yes, sir.

Q Is it not nearer 5 feet? Isn't it 57 inches?

A I could not say as to that.

Q Now then, the back partition of this toilet, in which you were, isn't the back partition of the toilet in which Chard was, is it ? A No, sir.

Q There are two partitions ? A Yes, sir.

Q What is the distance between these two partitions, between the back partition of this toilet and the back partition of the toilet in which Chard was ? A Why, I was looking right over on top of him.

Q Is it not eleven inches from the face of this partition, this side, at the top, to the face of the partition in which Chard was, on the top, 11 inches across there from one partition to the other ? A There is only one partition between them.

Q Between these two toilets ? A Yes, sir.

Q Don't you know that there is a space between this row of toilets and this row of toilets, and that between these toilets there is a space for pipes and there are pipes down through there ? A Yes, sir.

Q Then you are wrong in saying that there is only one partition, aren't you? There are two partitions there, aren't there ? A No, there is not exactly two partitions.

Q There is one partition comes up the back of one toilet, isn't there ? A Yes.

Q Then there is another partition comes up the back of the other toilet? A Yes.

Q And there is a space between those two partitions ? A But it is covered at the top.

Q How is it covered ? A I don't remember now whether it is covered or not. I don't think it is covered.

Q Well, it is important to you to give this as nearly right if you can. If you don't remember, please don't tell this jury because this boy's liberty depends on it. Now, you were wrong a moment ago when you said there was only one partition between these toilets, weren't you? A Yes.

Q Now, as a matter of fact, there are two? A Yes.

Q And is it not eleven inches from the face of this partition in this toilet, to the face of the partition in the toilet in which Chard was ? A It is about 11 inches.

Q How far is it from the top of this toilet, this partition

the back partition, to the ceiling ? A It is about 15 inches.

Q 15 inches ? A Yes, sir.

Q Now, between the top of this partition and the ceiling -- A Yes, sir.

Q (Continuing) And midway between the two partitions -- A Yes, sir.

Q (Continuing) there is an iron pipe runs along there, isn't there, a water pipe ? A I could not say as to that.

Q Don't you know there is ? A I don't remember now.

Q Do you know how you got your head past that iron part to look down in these toilets ?

MR. MCNISH: I object to the question.

Q Did you get your head past an iron pipe ? A Well, I got my head down there some way.

Q Well, tell us how you did it ? How long have you been a porter there ?

MR. MC NISH: Let him answer the question.

Q All right. A I climbed up on the bracket and hung over on the partition and my head right down, and looked right down at him.

Q Looked right down in there ? A Yes.

Q Now, when you did that, how did you get by that iron pipe ? A I don't remember seeing any iron pipe there. It was quite difficult --

Q You didn't see any iron pipe ? A It was quite diffi-

cult to get around there, but I got there.

BY THE COURT:

Q Is there an iron pipe there ? A I could not say at this time that now.

Q How long have you been there ? A About three months.

Q Are you there now ? A Yes, sir.

Q Going there from time to time ? A Yes, sir.

Q Cannot you say whether there is one there or not ?

A No, sir; I cannot.

Q You cannot ? A No, sir.

BY MR. CAMPBELL:

Q Now, from the position in which you were, you want the jury to understand that while you had your foot, your right foot I suppose, was it ? A Yes, sir.

Q On the top of this bracket, you reached across to the corner of this partition? A Yes, sir.

Q And looked down in here and saw how much of Mr. Chard's body? A Yes, sir.

Q How much of it, all of it ? A Yes, sir; I saw all of it.

Q And at the same time did you see Daily's body ? A I saw him stoop down.

Q You saw his body? A Yes.

Q Stoop down at the bottom of this other toilet over here (indicating)? A Yes, sir.

Q Do you know the distance between the tanks, from this tank here over to this tank, the space between these two tanks (indicating)? A I could not say as to that.

Q Do you know how wide these tanks are? A Those tanks are about 15 inches long and about 10 inches wide.

Q How about 19 inches for the tanks?

MR. MC NISH: I object to this.

Q Is it not 14 inches?

MR. MC NISH: Just a moment. The questions which are not part of the cross-examination I object to, and that is cross-examining him on his answer. If counsel asks questions, he is certainly bound by them. This witness was not asked by the People to give any dimensions.

THE COURT: Well, he is entitled to a wide latitude in cross-examining, in testing his credibility and knowledge, and his powers of observation.

Q Is it not 14 inches exactly from this tank to the end of this tank, the space between these water tanks? A Yes, sir.

Q 14 inches between there? A Yes, about 14 inches.

Q With an iron pipe running along between them? A Yes.

Q When did you find out about the iron pipe? Are you taking my word for it now? A No, sir; I am not taking your word.

Q You remember that it is an iron pipe there now? A Yes.

Q That it is midway between the top of this partition and

the ceiling ? A Yes, sir; it is running on the level.

Q Now, I want you to tell the jury how you reached from here, clear across here to this partition, and then you say yourself it is 11 inches across between the partitions, I want you to show us how you did that and reached past that iron pipe, and were able to see the whole of Chard's body standing in this place next door ? A I put my foot on the toilet bracket and I put the other foot on a partition on the other side. It was not a partition, but it was separated from the bricks. It was half, it was the end of the toilet, and one side was a brick wall and the other side was half of the toilet, and I had one foot on that side and my right foot on the toilet bracket, and I hung over and looked down.

Q Duffy, don't you know that it is a physical impossibility for a man to go up or get past that partition in such a way that he can see any more than the head of the shoulders of a man standing up in the toilet in which Chard was ? Now, isn't that a fact ? A No, sir.

Q It is not a fact ? And that is as true as anything else you have sworn to here to-day, is it ? A Yes, sir.

Q Now, after you saw what you have described in that position, you got down and went and spoke to Mr. Sweet, didn't you ? A I motioned to Mr. Sweet.

Q Did you get down from there ? A As soon as Mr. Sweet went around, I got down.

Q You got down and went around before the doors were opened, didn't you? A No, sir, I got there just about the time when they were coming out.

Q You got there about the time they were getting out from the toilets? A Yes, sir.

Q You were not up on top of the partition when the doors were opened, were you? A No, sir.

Q How long before these doors were opened, did you come down from the top of the partition?

MR. MC NISH: I object to that. He said he was not there when the doors were opened.

MR. CAMPBELL: Well, I withdraw the question.

Q You say now positively that you were not up there on top of that partition when the doors were opened by the men around in that aisle? A Yes, sir.

Q You were not there? A No, sir.

Q And it was not in pursuance of any signal or motion given by you then from the top of that partition, that these doors were opened, was it? A Yes, sir; I gave them a signal.

Q It was? A Yes, sir.

BY THE COURT:

Q Were the men in front of these doors when you got down?

A Yes, sir.

Q From your position? A Yes, sir.

Q And did you wait until they got in front of the doors

before you got down? A I --

Q Did you or not? A I went immediately around there.

Q As soon as they ^{got} to the doors? A Yes, sir.

Q Did you before they got to the doors, get down? Had they arrived at those points when you left your position and got down? A Yes, sir.

BY MR. CAMPBELL:

Q They were then in front of the doors when you got down?

A Yes, sir.

Q Who were in front of the doors? A Mr. Sweet and Leslie.

Q How long had they been in front of the doors before you got down? A Well, about 30 seconds.

BY THE COURT:

Q How much time elapsed between what you testified you observed in that position, and the time when the doors were opened by Sweet and Leslie, is it?

MR. MC NISH: Sweet and Leslie, yes, sir.

Q How much time? A I was not there when they opened the doors. I just got about around there when they were coming out, buttoning up their clothes.

BY MR. CAMPBELL:

Q Do you remember testifying in the Police Court?

A Yes, sir.

Q Is your recollection about what happened there that

night any clearer to-day than it was when you were in the Police Court, or not so clear? A Just about the same.

Q About the same? A Yes.

Q Were you asked this question, and did you give this answer? "I see this gentleman pull out his -- Arthur Chard--

Q What did you see him take out? A Pull out his penis and put it in the other fellow's mouth. Q What did you do after that? A I went and told Mr. Sweet and he came around and we opened the door" -- do you remember giving that answer to that question in the Police Court? A No, sir.

Q Was it true if you did give it? A No, sir.

BY THE COURT:

Q Did you give any such testimony as that? A I don't remember giving any such testimony.

Q You do not recall giving any such testimony? A No, sir.

MR. CAMPBELL: It has been stipulated, if your Honor please, between the District Attorney and myself, that this transcript of the minutes which I have received, is a correct transcript of the minutes in the Police Court, and with your Honor's permission, I will offer that portion of the transcript in evidence at this time, before I forget it.

(No objection).

BY MR. CAMPBELL:

Q (Reading): "Q What did you see him take out? A Pull

out his penis and put it in the other fellow's mouth. Q What did you do after that? A I went to tell Mr. Sweet. He came around and we opened the door. "

BY THE COURT:

Q You have no recollection of so testifying? A No, sir.

Q And the answer given there does not express the fact?

A No, sir.

Q Does it? A No, sir.

BY MR. CAMPBELL:

Q Now then, did you open the door? A No, sir.

Q When the door was opened, what did you see? A I saw both the men standing up. They were just about out of the toilets. The door was open, and they were both standing up.

Q Were you standing there when the door was opened?

A No, sir.

Q Did you see the door opened? A Well, they were partly out in the aisle.

Q When you got around to this aisle, which leads to the toilet in which Chard and Daily were, just as you started up this aisle, had the doors then been opened or were they opened as you started up the aisle? A I could not say as to that.

Q You do not know? A No, sir.

Q But when you got there, you saw Daily standing up and Chard standing * up? A Yes, sir.

Q Was Chard facing the front of the toilet, or the side of

the toilet, or what direction was he facing? A I could not say as to that.

Q You could not say? A No, sir.

Q Do you remember being asked this question at the Police Court, and giving this answer -- this is a continuation of the other testimony: "Q When you opened the door, what did you see? A I did not see anything at all, myself" -- do you remember that question and that answer in the Police Court? A No.

BY THE COURT:

Q Is that the fact? A No, sir.

MR. CAMPBELL: I will offer that in evidence and read it: "Q When you opened the door, what did you see?
A. I did not see anything at all, myself."

BY MR. CAMPBELL:

Q Now, Duffy, any one who is standing up in this toilet can easily see the head and shoulders of any one standing up in the hall, in the aisle, can't they? A Yes.

Q Either way; people in the aisle can see the head and shoulders of a man standing there? A Yes, sir.

Q And the man inside can look right out and see any one who happens to be standing in front? A Yes, sir.

Q Now, since you gave your testimony in the Police Court, have you and Mr. John Clifford Leslie talked about what your testimony was going to be down here? A Yes, sir; we talked something about it.

Q And he made some suggestions to you, didn't he ?

A Yes, sir.

BY THE COURT:

Q What did he suggest to you ? A He said that it was 18 inches from the top of the toilet to the ceiling, and that is about -- the rest of it is facts and just about the same as I told here .

Q He spoke about what you observed and what he observed, is that it ? A Yes, sir.

Q Did he make any suggestion to you as to what you should testify to here ? A No, sir.

Q Did you consider different subjects for the purpose of being in accord about it , A No, sir.

BY MR. CAMPBELL:

Q You did not want to be in accord with his testimony, did you ?

MR. MC NISH: I object to the question as incompetent, immaterial and irrelevant.

THE COURT: I will take it.

Q Do you understand the question? A Yes, sir.

Q What is your answer ? A I want to stand on my own testimony.

Q You did not want your testimony to be the same as his, did you? A No, sir.

Q Or agree with his? A No, sir.

Q You did not ? Well then, why did you and he discuss what the testimony was going to be here ? A We did not discuss about the testimony. We just talked about the case.

Q He suggested to you how far it was from the top of the partition to the ceiling ? A Yes, sir.

Q How easily you could look over it from the partition or down into the next toilet? A No, sir.

Q He did not make any suggestion like that? A No, sir.

Q You work there under him, don't you ? He is the head porter, isn't he ? A No, sir.

Q Well, he is head bridge-man down there, he is superior up there to you, isn't he ? A Yes, sir.

Q Now, while you stood there in front of the door, did you hear Chard say anything ? A No, sir.

Q Chard didnot say anything at all, did he ? A No, sir.

Q Chard did not say "My God" --

BY THE COURT:

Q (Interposing) Did you hear Leslie say anything to Chard ? A No, sir.

Q Were you with Leslie ? A Yes, sir.

Q When Chard was there, all the time? A Yes, sir.

Q All the time ? A No, sir; I was not with him all the time. I got around there a little bit after him.

Q Well, could you hear everything that was said ? A No.

BY MR. CAMPBELL:

Q You did not hear everything that was said? A No, sir.

MR. CAMPBELL: I think that is all.

RE-DIRECT EXAMINATION BY MR. MC NISH:

Q Duffy, the testimony that you have given here, is it testimony that has been told you to give? A No, sir.

Q Have you told us what you saw? A Yes, sir.

Q Now, at the time that you gave the signal to Mr. Sweet and Leslie, they were standing out in the alleyway, were they?

A Yes, sir.

MR. CAMPBELL: That is objected to as leading.

THE COURT: Yes, you may ask him where they were standing. The objection to its being leading is sound. You are on the re-direct, now.

Q Where were they stationed when you gave the signal?

A They were stationed out in the aisle.

Q And did you or did you not see them again until you had gotten down and walked around? A No, sir.

Q You did not see them until you had gotten down and walked around in front of this (indicating)? A No, sir.

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

DIRECT EXAMINATION BY MR. MC NISH:

Q Where are you employed, Mr. Sweet? A The Mills Hotel

No. 1, 160 Bleecker street.

Q What is your position in the Mills Hotel? A Assistant Superintendent.

Q How long have you been Assistant Superintendent? A I have been Assistant Superintendent since twelve months ago last October. I have worked for the Hotel as clerk eleven years now, since it started.

Q You have been employed by the hotel as clerk since it started? A Yes, sir.

Q And on the 11th of March, 1908, you were assistant superintendent? A Yes, sir.

Q Did you on that day, the 11th of March, see this defendant? A I did.

Q Was he in the hotel when you saw him? A Yes, sir.

Q Prior to that time, had you ever seen the defendant?
A Not to my knowledge.

Q And where was the defendant when you first saw him?
A In the public toilets.

Q And how did you come to be in the public toilets that time? A A man named Leslie, he come to the main office, the head office, and told me he wanted me --

MR. CAMPBELL: I object to what he told him.

BY THE COURT:

Q You spoke to Leslie and then you went with him? A Yes.

BY MR. MC NISH:

Q Leslie came and spoke to you about what time of the day or night ? A A few minutes before 9 o'clock in the evening.

Q And immediately after the conversation with Leslie, you and Leslie went to the toilet together? A At once.

Q You went into what part of the toilet? A The public toilet, it is. When we got inside, I saw another porter, Duffy, he climbed up the partition and was looking over, as we went in. He beckoned us with his hand to keep back, and then it might have been a second, it might have been a second and a half, when he went like that (illustrating) for us to go forward. We rushed around and swung the doors open and saw that man --

Q Whose door did you open? A What ?

Q Which door did you open? A I caught hold of the one farthest from the wall.

Q Who was inside, if anybody? A Chard.

Q This defendant? A Yes, he was inside that one.

Q When you first went in the public toilet, where was Duffy? A Duffy?

Q Yes. A Climbed up the partition in the back, looking over into the two where these men were.

Q Is there sufficient room between the ceiling and the top of that partition for a person to look over? A Oh, yes, easily, yes.

Q Now, tell us when you opened the door of this toilet and saw the defendant, what, if anything, you saw? A When the first door was opened, the man Daily, he got his penis --

Q Now, you opened the defendant's door, didn't you? A Yes.

Q Tell us what you saw when you opened the defendant's door? A He turned around from the partition, and as he turned around from the partition, his penis was out, and the seed was actually running from him.

BY THE COURT:

Q What is that? A The seed was actually running from him, as he pulled his penis from the hole in the partition.

BY MR. MC NISH:

Q Did he have an erection at that time? A Certainly.

Q And the semen was ejected? A Yes, that is right.

Q And what else, if anything, did you see? Did you look in the next toilet? A The one where Daily was -- because that was already opened, that door had been thrown open exactly as we had thrown that one, and he jumped up, Daily did.

Q What, if anything, did you see Daily doing? A Well, when we first opened the door, he got the other man's penis through the hole right in his mouth.

Q Did you have any conversation with this defendant?

A No, I did not, only calling him dirty animals and that sort of thing, for his conduct.

Q Did the defendant say anything at that time? A He made

no defense, either of them.

MR. CAMPBELL: He is not answering the question.

BY MR. CAMPBELL:

Q Did he say anything? A No, he didn't say anything at all when we accused him.

BY MR. MC NISH:

Q What did you do then? A I sent for a policeman. Then I went to call Mr. Thomas, the head man, the Superintendent.

Q And when you went to call Mr. Thomas, the defendant and Daily were there with whom? A Yes, they were guarding them, keeping them close where they were at the toilet, not to let them out.

Q Who was guarding them? A Duffy and Leslie.

Q Duffy and Leslie were guarding the defendant and Daily?

A Yes, sir.

Q And then they were put under arrest? A Yes, sir.

CROSS EXAMINATION BY MR. CAMPBELL:

Q How long have you known Mr. Leslie, Sweet? A Four or five months, perhaps about that. I wouldn't say; it is a short time, not very long.

Q Did you know him before he came to the hotel? A No, he never knew him before.

Q Only since he came there? A Yes.

Q And you at the time you received this signal from Duffy, were you in the main corridor or in the aisle, immediately in

front of Chard's toilet? A In the next row. Say that is one row where Chard was, was that row, and we were in this row, watching the head of Duffy (illustrating).

Q Mr. Sweet, this is a sketch which was introduced here. Now, where was Duffy? This, is supposed, I will explain to you, according to this sketch this is the toilet in which Chard was and this is the toilet in which Daily was; now, where was Duffy? A In this one here, at the back.

Q Where the cross is? A Yes, looking over.

Q Looking over? A Yes.

Q Where were you when you received from Duffy the signal in pursuance of which you opened the doors? A Here (indicating

Q Around here in the corridor? A Here, right at the corner, so as we could see him; we could see him there (indicating).

Q And then, when you got the signal to open the door, you left this position here? A Yes.

Q And went around here? A That is it.

Q So that you received no signal whatever from Duffy to open the doors while you were in this aisle in front of Chard and Daily's place? A Oh, no, sir.

Q Not at all? A There was not time, there was not.

Q Now, the top of the door to this toilet is only about five feet from the floor, is it not? A It is about that; the bottom of the doors (indicating).

Q I am talking about the top? A Oh, the top, yes, I believe that's about five feet.

Q If you rushed up this aisle, you could just look right over and see everything going on in there? A We could see the man's knees and could see his head.

Q You would not have to open this door in order to see what was going on there, if you looked over? A Well, we would not have caught them in the act, as we did, by looking over, because they would have seen us.

Q Do you mean to say that if you had rushed into this aisle and looked over the toilet in this way (indicating), that you could not have seen everything going on there just the same? A We could have, but the other way was the quickest.

Q It was quicker to take this door and open it, than it was to look over? A It was.

Q Now, at the time that you got the door open, you say just at the instant that the door was opened, Chard was turning away, and the semen was flowing from his penis? A Yes, sir.

Q At the time the door was opened, he had drawn his penis from Daily's mouth? A Yes.

BY THE COURT:

Q Did you see that? A Yes.

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

Q You saw the withdrawal from Daily's mouth, of his

penis ? A Yes, sir; I did.

BY MR. CAMPBELL:

Q A moment ago, in answer to my question, I asked you whether at the time the door was opened, Chard had withdrawn his penis from Daily's mouth, and you saw the semen then running out and you said yes? A That's right.

Q Is that right? A Yes.

Q So that he had withdrawn his penis before the door was opened, hadn't he ? A Certainly, when the door was opened, he jumped on the instant, and so did the other man.

Q Daily's door was opened first ? A Yes, that's right.

Q So that before Chard's door was opened, Daily had jumped away, and his penis was exposed, and the semen was running from it ? A You mean Chard was turned ?

Q Yes. A Chard had turned, yes.

Q So that you did not see the withdrawal of Chard's penis from Daily's mouth, because Daily's door had been opened first, and Chard had received the warning and had jumped back, is that right? A I did see it, because it was in his mouth. The partition is only half an inch thick, wood.

Q I know, but you did not see Chard's penis in Daily's mouth, did you? A Certainly I did.

Q Then, you actually saw the withdrawal, did you?

A Say the door is on the hinge --

Q (Interrupting) Just please answer my question. You

actually saw the withdrawal? A Certainly.

Q You say Daily's door was opened first? A Yes.

Q And notwithstanding that fact, Chard kept his penis in Daily's mouth until Chard's door was opened? A No. No sooner than Daily's door was thrown open, and Daily was in the act, and Chard's was in his mouth, no sooner than the door was thrown open, of course the two jumped, the other door was thrown, you see, one side like that (illustrating), and as he turned, as I say, there was the semen running from him.

Q Did you testify to that fact in the Police Court?

A I certainly did, oh, yes.

Q I show you the stenographer's minutes, and ask you to please show me --

MR. MC NISH: Objected to.

THE COURT: No, no, do not do that. Direct his attention to anything you may think proper.

MR. CAMPBELL: Your Honor, I cannot direct his attention to something that is not there.

THE COURT: Well, the question may not have been asked him. He would not be responsible if they were not asked him.

Q You did not see the defendant Daily when he took Chard's penis in his mouth? A Oh, no, no.

Q (Reading) "Q Did the defendant Daily, you say, take the penis of the defendant, Arthur Chard, in his mouth? A Yes,

sir. Q You saw that yourself ? A Yes, sir." A I did; yes, sir.

Q But you did not see him take it ? A Oh no, that's right.

Q Then that testimony that ~~he~~ you gave in the Police Court is incorrect ?

MR. MC NISH: I object to that question.

MR. CAMPBELL: I will withdraw it, if you object.

Q Now, Mr. Sweet, how much of Duffy's body could you see when you stood here in this corridor looking at Duffy -

A Yes.

Q (Continuing) Who was in this toilet; how much of Duffy's body could you see ? A Well, I guess about to here (indicating).

Q Down to his shoulders ? A Yes, about that.

Q You do not know then how he held himself up to that position? You could not see how he held himself up there ?

A I could not say. I don't know; I was not near enough to see that.

Q Well, the door was closed in the toilet? A Yes.

Q So that you could not see how he maintained his position up there on top? A No, I couldn't see. I know how they do maintain that position, but I did not see him.

Q Well, there are two partitions along there, aren't there, one partition at the back of this toilet, and another

partition at the back of this toilet (indicating)? A Yes.

Q How far apart are those partitions? A I should say about that (indicating).

Q That far apart? A Yes, justabout; not quite the length of that table.

Q And is there any iron pipe running along between the water or flush tanks? A There is an iron pipe runs right along to supply the flush tanks.

Q About half way between the top of the partition and the ceiling? A I think they run close to the little flush box there.

Q They are nine inches above the top of the partition, the iron pipe, isn't it? A I have not sized that up exactly.

Q Well, it occupies that space? A The flush boxes rest upon the top of the partitions.

Q Yes, and they fill up practically the entire space, don't they, between the partition and the top? A Oh no, because as I say, that is about the width of the toilet, and the flush boxes are only about that length (indicating).

Q Now, you say the bottom of the tanks rest on the top of the partitions? A Yes.

Q The tanks are how wide, how long rather? A That is about the length of them (indicating).

Q And what is the distance between the tanks? A The width of each toilet, you know, is about that, I should say

(indicating).

Q 30 inches, isn't it, exactly? A Well, I have not measured them exactly. They are the ordinary sized toilet, it is.

Q The distance between the tank of this toilet here and the tank of the toilet next to it is 14 inches, isn't it?

A I should say, I should think it must be a bit more than that, I should think. I have never measured it,

Q Oh, you would not be sure of it? A No, I would not be positive of it.

Q But it is between these tanks and between the top of the partition and the ceiling that this pipe runs, isn't it?

A Well, I don't know. I can't tell you exactly the position of those pipes. I have not looked.

Q Now, Mr. Sweet, do you recall asking the witness Leslie whether he thought you had better send for a police officer?

A What?

Q Do you recall asking the witness Leslie whether he thought you had better send for a police officer? A I directed himself to do that.

Q He says you asked him whether you had better send for an officer or not; did you ask him? A I told him to go and get a policeman, and when I told him to get a policeman, then I went and fetched the superintendent myself.

Q Didn't you ask him whether he thought you had better

send for a policeman? A I don't recollect doing that at all. My intention was to have them locked up, and I sent for a policeman.

Q How long had these holes been in the partition there, in the toilets? A From time to time they had been made for years. We put pieces of wood over them. Now recently they put sheet iron over them.

Q The holes had been there in the toilet for at least three months before this occurrence, hadn't they? A Oh, been seven years, off and on.

BY THE COURT:

Q You mean this particular hole?

MR. CAMPBELL: Yes.

BY MR. CAMPBELL:

Q This particular hole? A I would not say that.

Q And other holes around? A Yes, there has been other holes.

Q And these holes had been all repaired after Chard was arrested? A Only coverings put on them, not new panels.

Q Oh no, but they have been all covered up? A They have been all covered up, yes.

Q And when this door was opened and Chard was exposed to you, Chard did not say anything, did he? A Not in my presence. I left to go and fetch--

Q You were there when the door was opened?

A (Continuing) Not in my presence. I left to go and fetch the superintendent.

Q But you were there when the door was opened?

A Yes sir.

Q You opened it? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. MC NISH:

Q Now, Mr. Sweet, what is the width of that partition that runs down through the middle of these toilets?

A The width of it?

Q Yes, this middle partition between the two toilets that way (indicating)? A They are all the same all the way around.

Q Well, what is it, about what? A It might be, the frame would be a bit thicker than the top of that table (indicating), and then there are thin wooden lengths.

Q Do you understand my question? A Because there is a wooden frame around it.

Q Just a moment. That represents the toilet in which Daily was (indicating)? A Yes, sir.

Q And this represents the toilet in which Chard was (indicating)? A Yes.

Q And this represents the toilet in which Duffy was (indicating)? A Yes.

Q Now, between the toilet in which Duffy was and the toilet in which this defendant was, there is a partition, isn't

there ? A Oh yes, there is a partition.

Q Now, how wide is that partition? A The top of it, two and a half inches.

Q Two and a half inches wide ? A It might be two and a half or it might be three. I wouldn't say. It is an ordinary partition.

Q It is just the thickness of the wood, isn't it ?

A Well , there is a thick piece like at the top. Of course it is thinner lower down.

Q Raise your voice, please. A There is a thick piece of wood at the top, might be about three inches wide. Of course the rest of it lower down is thinner wood.

Q Well, it is not eleven inches wide, is it ? A Oh no, of course not.

BY THE COURT:

Q Before you opened the door of this closet, could you see from the position that you were in, what was going on in either one of the closets ? A Only the one that Chard was in.

Q Did you look over and see before you opened the door, what was going on in Chard's closet, the closet that Chard was in? A I did not look over. As we ran up to it, I could see his hat.

Q Did you see anything ? A I saw his hat.

Q (Continuing) Until the door was opened by you? A I did not see anything going on, no, sir.

RE-CROSS EXAMINATION BY MR. CAMPBELL:

Q Now, Mr. Witness, in answer to the District Attorney's question, he asked you to describe the partition? A Yes.

Q Assuming the position at the back of the toilet in which Duffy was, you say there is a flat piece on the top of that partition about two or three inches wide? A Yes.

Q Now, that partition, at the back of that toilet, is not the same partition which is at the back of Chard's toilet, is it? A They are all made right through alike, and the space back on all the same framework.

Q Well, there are two partitions between the back space of the partitions and the closet, aren't there? A No, it is one partition that way and one partition crossways.

Q Now, assuming that this is the toilet in which Duffy is (indicating)? A Yes.

MR. MC NISH: I object to showing the witness that.

Q There is a space between this back partition and this back partition (indicating)? A No space whatever.

Q All one piece of wood, eh? A All one piece of wood, no space whatever.

BY THE COURT:

Q When you opened this door, what was the position of the defendant, what part of his body was exposed to your view?

A You mean Daily?

Q No, this defendant here, when you opened that door, you

say , A He was turning around.

Q Turning around, and it happened very quickly?

A Momentary.

Q That was all? Everything that you saw must have been taken in at that one glance? A That is it.

Q And that is all that you actually did see, is what you saw at that moment? A That is all.

Q And you saw the defendant's penis in Daily's mouth, and the semen running off it in that time? A That is it.

BY MR. CAMPBELL:

Q How much of Daily's body could you see at that time?

A When Daily's body --

Q (Interrupting). When you saw Chard turn around, how much of Daily's body could you see? A I could see all of him. He was sitting on the seat, Daily was.

Q In other words, when you swung this door open, you swung it from left to right, did you? A The one that Daily was in swung to the right.

Q Did you see Daily before you saw Chard? A I saw Daily first.

Q You saw Daily first? A Yes. He was sitting on the seat.

Q And then, after Daily's door was opened, and you saw Daily, you opened Chard's door? A Opened Chard's door, that's right.

Q And when you opened Chard's door, Chard still had his penis in Daily's mouth? A Oh, no.

Q He had not? A No. He jumped on the instant when the other door was opened.

MR. MC NISH: That is the People's case.

MR. CAMPBELL: I move to acquit, if your Honor please, upon the ground that the prosecution have failed to prove beyond a reasonable doubt, the allegations contained in the indictment; upon the ground that there is an absolute variance between the pleadings and the proof.

MR. MC NISH: I am going to ask to amend, if your Honor please, the indictment, to conform to the proof.

THE COURT: What do you say as to the second count?

MR. CAMPBELL: There is some defect, I think, your Honor, as to the second count, the same as there is in the first.

MR. MC NISH: Well, the second count seems to be properly stated in my copy, as the proof is.

THE COURT: Then the People elect to go to the jury upon the second count, I take it, is that it?

MR. MC NISH: Yes, your Honor.

MR. CAMPBELL: The second count, as your Honor will note, alleges that the defendant Chard, by the mouth of himself, that Chard had carnal knowledge of Daily.

THE COURT: I will strike out "self", "with the mouth"

of him ".

MR. CAMPBELL: To which I object.

THE COURT: I will send the case to the jury on the second count.

MR. CAMPBELL: I take an exception to your Honor's-- well, your Honor has not formally denied my motion, but I suppose that means that, and I take an exception to your Honor's refusal to direct the jury to acquit upon the grounds stated.

I waive any opening, and will put my case in, and reserve any remarks I have for the close of the case.

T H E D E F E N S E .

A R T H U R C H A R D, the defendant, being called and duly sworn as a witness on behalf of the defense:

MR. CAMPBELL: With your Honor's permission, I will withdraw this witness, as I have some character witnesses here, and while that is not the usual order of proof, I would like them to testify to-day, and will not have to bring them here later.

THE COURT: Yes, you might do that, because I am going to adjourn at quarter past three.

WILLIAM MARTIN VAN SAUN, being called
and duly sworn as a witness on behalf of the defense, tes-
tified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q Now, please keep your voice up a little loud?

A Yes, sir.

Q Mr. Van Saun, how long have you resided in New York City

A All my life.

Q How long have you known the defendant? A Nearly two
years.

Q What is your business, sir? A I am bookkeeper and
confidential clerk.

Q Louder, please. A I am bookkeeper and confidential
clerk.

Q For what concern? A The Central Stamping Company.

Q How long have you been so employed? A About 25 years.

Q Do you know other people who know the defendant, Arthur
Chard? A I do.

Q Do you know what his general reputation is for truth
and veracity and clean living? A I do. It has been that of
a gentleman.

CROSS EXAMINATION BY MR. MC NISH:

Q How did you first come to know the defendant? A I met
him at the house of a mutual friend.

Q Whereabouts? A In this city.

Q When was that ? A About well, very nearly two years ago, when I first became acquainted with him.

Q Can you fix what month that was ? A No, I really could not.

Q In whose house was that ? A The house of a lady.

Q Do you remember the name ?

MR. CAMPBELL: I object to that. In this case I do not think it is necessary to have that. Here is a gentleman who has been employed for twenty-five years in one place in New York City, and he met the defendant in the home of a lady.

THE COURT: Yes, unless it is important, I do not think I would disclose the name, because I do not consider that very material, unless there is some purpose behind it which will assail the reputation of the defendant.

MR. MC NISH: Well, I will withdraw that.

Q And when did you next, after that first meeting, meet this defendant? A Why, not a great while after that.

Q Where ? A At the same kind of an entertainment.

Q And what was the entertainment? A Well, it was an afternoon "at home", a lady received from 4 to 7.

Q And the second time you met him at an afternoon reception at the same place ? A I don't remember whether it was or not.

Q How often have you met the defendant in the last two

years , A Well, within the last six or eight months, I have met him some weeks three and four times; other weeks, only two and three times.

Q And always at social functions ? A Oh, no. We would go out to dinner quite frequently together, and when we did not go to the theatre, we would go to my room and play cards.

Q Where do you reside ? A 229 West 44th.

Q Are you married ? A I am not.

Q And what is 229 West 44th , A It is a furnished room house.

Q And you have how many rooms there ? A I have one.

Q Do you know where the defendant lives ? A I do.

Q Where ? A 71 West 48th.

Q And has he lived there ever since you have known him?

A He has.

Q Do you know what the defendant's business is ? A Yes.

Q Have you ever seen him at his place of business ?

A No, sir.

Q And what you know of his business is only because he has told you? A Yes.

Q Do you know other people who know the defendant? A I do.

Q Have you ever talked over the defendant's character with any one ? A Only since this trouble.

Q Only since this trouble ? A That's all. There has been no occasion before.

Q The Central Stamping Company, where is their place of business ? A 72 Fulton street.

Q What is their business? A Enamelled ware.

Q Enamelled ware ? A Yes.

Q What kind of ware ? A Kitchen ware, kitchen utensils.

Q And you are bookkeeper and confidential clerk?

A Yes, sir.

Q For whom are you confidential clerk? A For the firm.

Q How long have you been employed there ? A Over twenty five years.

Q How long have you resided at 229 West 44th street ?

A Since last September.

Q Where did you reside before that? A 66 West 84th.

Q What kind of house was that? A That was an apartment house.

Q What is the name of it ? A It has no name.

Q You had an apartment there ? A No, just a room.

Q And in whose apartment did you have the room?

A Mrs. Bartlett.

Q Have you ever been to the Mills Hotel? A I have not.

F R A N K S A R G E N T, being called and duly sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. CAMPBELL:

Q Where do you live ? A 10 West 65th .

Q How long have you lived in New York City ? A Two years.

Q What is your occupation? A In the Bankers Trust Company.

Q What is your position in the Bankers Trust Company?
A Bookkeeper.

Q Where did you live before you came to New York?
A Ireland, with the Provincial Bank of Ireland, for ten years.

Q How long have you known the defendant? A About eleven years or so.

Q For how long a time have you known him in this country?
A About two years.

Q Previously to that were you acquainted with him, and where? A London.

Q Canada? A London, England.

Q Have you seen a great deal of the defendant? A Yes, a great deal.

Q Associated with him a great deal? A Yes.

Q And do you know other people who know him? A Yes.

Q Do you know what his reputation is for truth and uprightness and clean living? A I do.

Q What is it, good or bad? A Good.

Q You have had many opportunities to observe what his private life is? A Yes.

MR. MC NISH: I object to the question.

THE COURT: Yes, it seems to me everything else is a matter of cross-examination.

MR. CAMPBELL: All right, sir.

CROSS EXAMINATION BY MR. MC NISH:

Q Have you ever discussed his character as to clean living with any one? A I have.

Q When? A Latterly.

Q Since he has been arrested? A Yes.

Q Before that did you ever discuss it with any one?

A I don't remember.

Q Well then, so far as you know, or that is to say, he had no reputation for cleanliness before he was arrested?

A His reputation was the highest.

MR. CAMPBELL: One moment. That is objected to.

THE COURT: You have an answer that ought to be satisfactory. Do you want that stricken out.

MR. CAMPBELL: No, sir; I want to let that stand.

It was the form of the question to which I objected, not the answer.

Q Do you know where the defendant lived when he first came to this country? A Yes.

Q Where? A He went to live at 71 West 48th street. I forget what month.

Q Did he ever live with you? A No.

Q Do you know Mr. William Martin Van Saun? A Mr. Van Saun, yes.

Q How long have you known him? A A few months.

Q Did you know him before the defendant's arrest?

A Oh, yes.

Q And are you married? A No, I am not.

Q Where do you live? A 10 West 65th.

Q I did not hear you. A 10 West 65th.

Q What kind of house is that? A The front of an apartment.

Q It is an apartment house? A Yes.

Q And what is the name of the apartment house? A There is no name.

Q Just a number? A Just a number.

Q And do you have an apartment of your own? A No, I board with a family.

Q Board with a family? A Yes.

Q What is the name of the family you board with?

A Green.

Q Who composes that family? A Who which? The mother and daughter; two daughters, one is away, and a little son.

Q Where have you met the defendant? A In London.

Q No, but since you have been in this country, where would you meet him? A Well, he is constantly at my place, and I very often dined with him. We go to shows now and then.

Q You dined together, where? A Well, I sometimes dine at his place.

Q And how many times a week would you see the defendant?

A Maybe a couple, maybe three times. I know him better than anybody else here. I see him very constantly.

Q Did this Mr. Martin Van Saun dine with you too? A I have been at dinner with him.

Q Have you attended receptions with the defendant, afternoon receptions? A No.

Q Did the defendant ever spend the night in your apartment? A No.

Q Did you ever the night in the defendant's apartment? A No.

Q You are very friendly with the defendant? A Very friendly.

Q And you would like to do anything to help him out of his trouble? A Yes, if he was ever in trouble, I certainly would.

THE COURT: Gentlemen, you must not discuss this case, nor form nor express any opinion about it, but keep your minds open and free until it is submitted to you.

I will ask you to be here in your seats at half past ten o'clock to-morrow.

(The further trial of the case was then adjourned until Thursday, April 8th, 1909, at 10.30 o'clock A.M.)