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CASE # 369

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

Part I.

----- X
THE PEOPLE : Before
vs. : HON. JOHN W. GOFF, R.,
WALTER BENNETT. : and a Jury.
----- X

Tried, New York, ~~July~~ 8th, etc, 1903.

Indicted for Sodomy.

Indictment filed March 4, 1903.

APPEARANCES.

ASSISTANT DISTRICT ATTORNEY JAMES R. ELY, for the People,
MESSRS. GREENTHAL & GREENTHAL, for the Defense.

Frank S. Beard,
Official Stenographer.

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(A jury was empaneled and sworn.)

THE COURT:

Gentlemen of the Jury:

Now that you are complete in numbers, we shall not proceed any further in the case, tonight.

You are aware of the nature of the crime charged against the defendant, made clear to you by the various questions of the District Attorney, in ascertaining your qualifications as jurors.

Particularly do I desire to call your attention to an incident that occurred here, during the examination of talesmen.

You will recollect that one gentleman stated that he was uncertain as to his ability to render a fair and impartial verdict in this case, because of some things that he heard spoken of about the case while sitting in the Court, and while in the corridor outside.

That gentleman has been excused, of course, from the case. But it is an incident that I wish to make use of as an illustration of what I am about to say to you; and that is, to impart to you a cau-

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tion and a very earnest caution, not to talk about the case, either among yourselves or with any person whomsoever, either in the Court room or in the corridors.

Gentlemen who are summoned here as jurors not acquainted with the grades and the peculiarities of many of the people who attend the sittings of the Courts, are frequently and innocently drawn into conversations about cases that are likely to come before them as jurors; and, frequently and purposely are opinions indulged in and expressions made by persons, by interested persons, in jurors' hearing, or in the hearing of gentlemen who are likely to be called to serve as jurors, which are likely to prejudice their minds, one way or the other, if called upon to sit in that particular case.

I caution you, gentlemen; and, in cautioning you I would like that my words of caution would extend to every gentleman called to serve as a juror in this Court, to be extremely careful not to permit any person to talk about any case that is likely to come before this Court for trial; and to be jealous of your own impartiality.

If any person enters upon a conversation about



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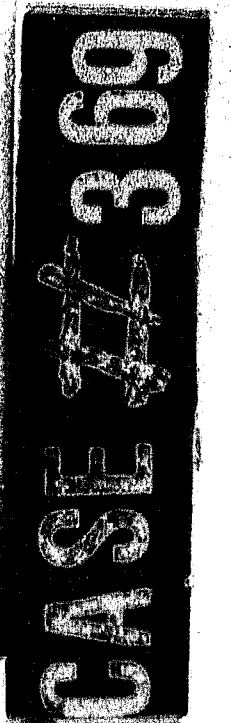
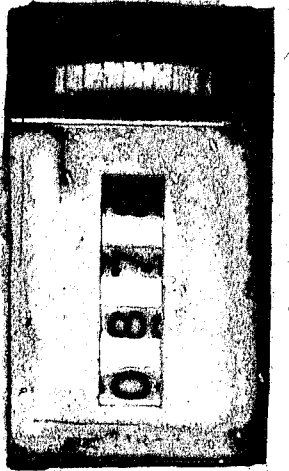
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any case that is likely to come before you, I caution you to immediately refrain from conversing with that person, and to get away from him as quickly as possible; for I do not hesitate to repeat to you from our experience in the Courts here, that it is not an infrequent occurrence that men lounge about the Court chamber and the corridors, with a purpose in view, and as very pleasant-tongued strangers, draw jurors into conversations which are very injurious, and which are begun with a design to influence their minds regarding some particular case that may come up before them, as jurors, during the term of Court.

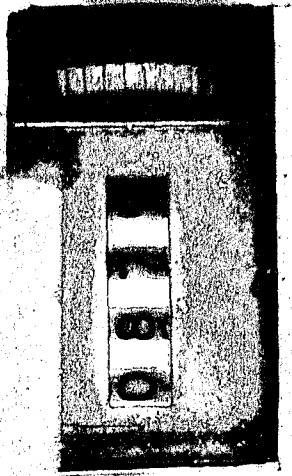
So, you will observe, gentlemen, the necessity of being extremely careful and watchful, not only of your own expressions, but to give no person, whether he be stranger or otherwise, an opportunity to say anything in your hearing, or to enter into conversation with you.

I trust that, with this warning, I will not have further occasion to repeat it.

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



(The trial was then adjourned until Tuesday
morning, June 9, 1903, at 10:30.)



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TRIAL RESUMED.

New York, June 9, 1903.

MR. ELY: If your Honor please, before opening to the jury, I would ask to have all the witnesses on both sides excluded from the Court room.

THE COURT: Yes.

Opening Address for the People
of
ASSISTANT DISTRICT ATTORNEY JAMES R. ELY.

.....

If your Honor please:

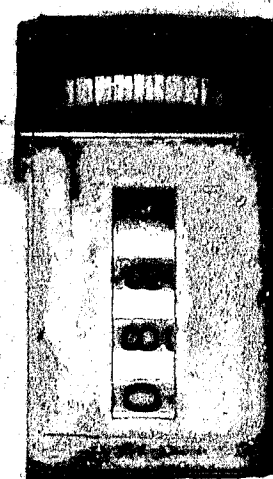
And Gentlemen of the Jury,

The Grand Jury of the County of New York have indicted the defendant, Walter Bennett, for the crime of sodomy.

Sodomy is, according to the statute, variously defined; but in the case at bar, the crime is having carnal knowledge of any male or female person by the anus or by the mouth, or voluntarily submitting to such carnal connection.

The charge, in this case, is that, on the morn-

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ing of the 22nd of February, 1903, in the County of New York, at 1730 Broadway, in a place known as the Ariston Baths, this defendant, Walter Bennett, together with one George Galbert, had improper carnal connection with each other, Bennett submitting voluntarily to an act of carnal intercourse, perpetrated upon him, the said Bennett, by Galbert, through the anus of the said Bennett, Galbert introducing his genital organ, in a state of erection into the anus of the said Bennett, and performing various acts, indecent acts, whereby carnal sexual intercourse was maintained between them.

That, thereafter, Bennett introduced his genital organ in the mouth of said Galbert, the genital organ of the said Bennett being at that time in a state of erection; and, after its introduction into the mouth of said Galbert, by the said Bennett, and indecent motions having been gone through with by both, the genital organ of the said Bennett was withdrawn, in a state of collapse.

These acts, as I say, are alleged to have occurred at the Ariston Baths.

The Ariston paths are Turkish and Russian baths, situated in the Ariston Apartment House; and that is, as I stated before, at the northeast corner of 55th street and

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Broadway, in the City and County of New York.

The Ariston Baths are in the basement of the premises. You enter on 55th street by going down two or three steps, and you enter an office, where you get your tickets.

And then you are assigned to a dressing room, where you go and disrobe.

There are the ordinary steam baths, the hot chamber and divers cooling and dressing rooms throughout the premises.

The place that this act that is complained of in this indictment is alleged to have occurred was the extreme northwesterly cooling room in those premises on the Broadway side.

The baths extend along 55th street, to the easterly limit of the Ariston Apartment building, but they do not extend to the extreme westerly end; for there are shops on the front of the apartment house, which cut off a part of these Ariston Baths.

But the place where this act, as I said, a moment ago, is alleged to have occurred, is in the extreme northwesterly cooling room of the premises known as the Ariston Baths.

When we prove these facts, gentlemen, we shall

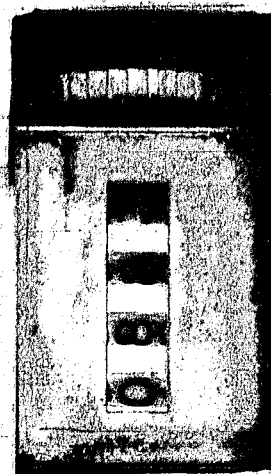


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ask for a verdict of guilty of the crime charged in the
indictment, to wit, sodomy.

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THE PEOPLE'S TESTIMONY.

THOMAS F. PHELAN, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY.

Q Phelan, you must talk loud. All the windows are open here, and it is difficult to make yourself heard. Your name is Thomas F. Phelan? A Yes, sir.

Q And you are a member of the Municipal Police Force of the City of New York? A Yes, sir.

Q And you were a member of the Police Force of the city of New York on the 21st day of February, 1903? A I was.

Q Attached how? A To the Fourth Inspection District.

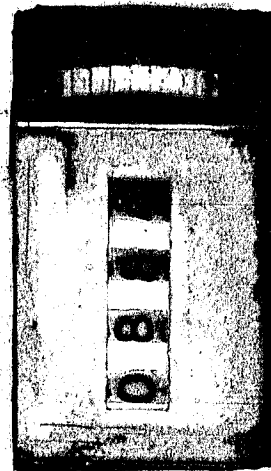
Q Under what Inspector? A Acting Inspector Walsh.

Q Now where, if anywhere, did you go on the night of the 21st of February, 1903? A I believe it was the 22nd of February.

Q The night of the 21st and morning of the 22nd; was it not? Saturday night? A Saturday night, the night of the 22nd, it was.

Q No. It was the Saturday night, 1:30 on---

MR. GREENTHAL: Objected to. One moment. Let the officer testify.



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THE COURT: Oh, it does not seem to me material. The officer says it was on Saturday night ?

THE WITNESS: Yes, sir; it was Saturday night.

BY MR. ELY:

Q Yes. It was Saturday night before Washington's Birthday; was it not? A Yes, sir.

Q I show you a calendar for the month of February. Now, where, if anywheres, did you go on the evening of the 21st of February, 1903? A To the Ariston Baths, 1730 Broadway.

Q Now, about what hour in the evening did you go there?
A I went there about nine o'clock.

Q Who, if anybody, accompanied you? A I went there alone.

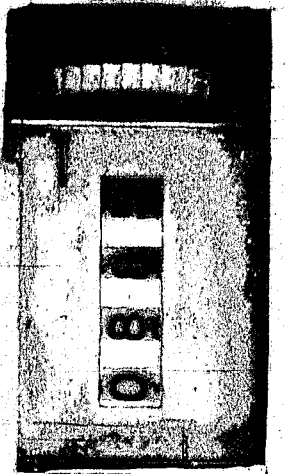
Q What, if anything, did you do, when you got to the Ariston Baths? A When I entered, I went in the office and paid a dollar and was assigned to a dressing room and took off all my clothes, and placed a sheet about me, and went out and took a bath.

Q Describe-- I show you this paper and ask you to look at that, and ask you to tell me what that is, if you can?

A It is a diagram of the baths.

Q It is a diagram of what baths? A The Ariston baths.

Q Situated at the north corner of 55th street and Broadway, in New York County? A Yes, sir.



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MR. GREENTHAL: One moment. I object to the District Attorney leading the witness.

THE COURT: Proceed, Mr. District Attorney.

BY MR. ELY:

Q And the premises that you have stated you visited on the night of the 21st of February, 1903? A Yes, sir.

Q From your personal knowledge, are you able to state whether or not that is a correct representation of those premises? A Yes, sir, it is.

Q The Ariston baths? A Yes, sir.

MR. ELY: I offer it in evidence, if your Honor please.

MR. GREENTHAL: I object to it, if the Court please. We object to it on the ground that it is incorrect, and the witness has not proven himself an expert on the subject.

MR. ELY: I will ask to have it marked only for identification now.

THE COURT: I will admit it for identification.

(The paper is marked People's Exhibit 1 for identification.)

BY MR. ELY:

Q Now who, if anybody, did you see in the Ariston baths on the evening of the 21st of February, 1903, that you knew?

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A I didn't know anybody, when I entered.

Q Did you see anybody that you knew after you entered?

A Yes, sir; six officers.

Q Who were they? A Officer Fitzsimmons, Hibbard, Ward, Connolly, McCutcheon and Abbott.

Q Now about what hour did you see Fitzsimmons and McCutcheon? A Well, I think it was about half past nine.

Q And that was at or about the time that you arrived?

A No, sir; I was there first. I was the first one in the baths.

Q And did you see this defendant there, on that evening?

A I did.

Q And when did you first notice this defendant? A At half past ten.

Q And what, if anything, was this defendant doing when you saw him, about half past ten, on the night of the 21st of February, 1903, at the Ariston Baths, in the County of New York?

A He was walking about the place, from room to room.

Q Well, what was he doing? How attired and how was he walking? Just described? A He was naked, with the exception of a sheet drawn tightly around his hips; and he was trailing the sheet along three or four feet.

Q And did you hear the defendant say anything or see him do anything? A Well, he was talking to different people

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there.

Q And did you have any conversation with him? A Later on, I did.

Q When did you have any conversation with him?

A About 11 o'clock.

Q And who, if anybody, was with you when you had any conversation with this defendant, about 11 o'clock, as you state? A Officer Fitzsimmons was with me.

Q And what was the conversation that you had with the defendant? Did he speak to you first or did you speak to him, or how? A He got hold of me by the---

Q Who did? A This defendant.

Q Bennett, that man there (indicating the defendant)?

A Yes, sir; that man. And he placed his arm around my waist.

Q Yes. A And asked me if I would go to his room with him. I asked him what for, and he said he would give me a very pleasant time, if I would go to his room with him.

Q Well. A I told him I couldn't go now; that I would go later on. At half past two, I made an appointment to go to his room with him.

Q And how was the defendant attired when he threw his arms around you and had the conversation that you have stated? A Well, he was naked with the exception of the sheet

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around his waist, about his hips.

Q About his waist? A About his hips.

Q And how were you attired? A I had a sheet thrown about my shoulders.

Q Well, then, what happened after that? A Why, I next saw him in the westerly room of the bath, the cooling room.

Q Now, just describe where that westerly cooling room of the bath is? A Well, it is toward Broadway; it is the most westerly room of the bath.

Q And on which side of the bath is it, the north side or the south side? That is, is it along the 55th street side or the north side? A Well, it is along the north side, towards Broadway.

Q The northwest corner; is it? A Yes, sir.

Q All right. Now about what time was it that you saw the defendant in the northwesterly cooling room of the bath establishment?

A When I entered that room it was about 1:25.

Q Now, who entered it with you, if anybody?

A Officer Fitzsimmons was with me.

Q And who, if anybody, did you see in the room, the northwesterly room of the Ariston Baths, at 1:30 when you went in there with Officer Fitzsimmons?

A Well, I entered it about 1:25. I saw this defendant

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lying on a couch there.

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

Q Well, was he alone or was somebody with him? A He was alone at that time.

Q And then what happened? A Why, he was lying on the couch there, facing toward me. I was standing against the wall, in company with Officer Fitzsimmons.

Q Now which wall were you standing against? A The southerly wall of the room.

Q The southerly wall of the room? A Yes, sir.

Q About how far from the entrance of the cooling room were you standing, this cooling room? A I should judge about five or six feet.

Q And you say Fitzsimmons was with you? A He was.

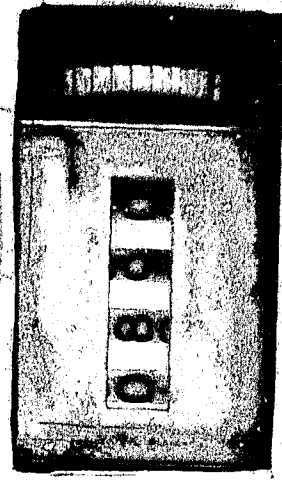
Q And what happened when you were standing there?

A This defendant was lying on the couch there and a man who I have since found out to be George Galbert---

Q Now wait a minute. Is that George Galbert (indicating a man at the bar?) A That is the man, yes.

Q The man that now approaches the bar? A Yes, sir.

(The District Attorney called for George Galbert and a man approaches the bar and the witness identifies him as George Galbert.)



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Q That is the man? A Yes, sir.

Q The person that came into the cooling where you were, with the defendant and Officer Fitzsimmons, on the morning of the 21st of February, 1903? A Yes, sir.

Q Now what happened? A The Galbert man approached the couch on which the defendant was lying and raised his legs.

Q Raised his leg? A Yes, sir; the defendant's legs; and turned him around so that his legs was toward the side of the couch. He dropped the sheet from his shoulders and he stood there in front of him, entirely naked. His penis was in a state of erection, and he raised Bennett's legs, the defendant, and inserted his penis in the anus of this defendant, Bennett.

Q Well, what did he do then? A Moved back and forward for several moments; and then withdrew his penis; and it was in a state of collapse. He then laid down alongside of the defendant, Bennett.

Q What did he do when he laid down beside Bennett?
A They put their arms around one another and kissed one another several times. In a few moments then, he---

Q Who is he? A Galbert. Placed his head over the penis of the defendant, Bennett.

Q Did you see the penis of this defendant Bennett?
A Yes, sir, very plainly.

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Q Before Galbert placed his head over it? A Yes, sir.

Q Well, in what condition was the penis of the defendant? A It was erect.

Q And then what did Galbert do? A He placed his mouth over it and moved his head up and down for several moments.

Q Yes. A He withdrew the penis of this man from his mouth and spit out, and sat down on the couch for a minute or so, a few moments probably, and left the room. This defendant laid on the couch---

MR. GREENTHAL: One moment. I didn't hear.

BY MR. GREENTHAL:

Q Who left the room?

MR. ELY: I object to these interruptions, if your Honor please. He can cross examine.

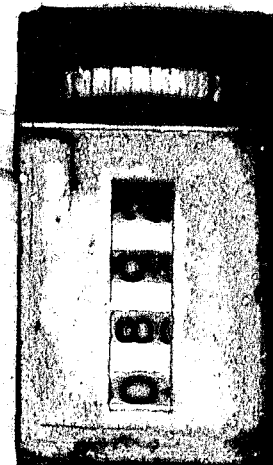
THE COURT: Yes. The witness spoke plain enough.

MR. GREENTHAL: Well, I couldn't hear him, your Honor.

THE COURT: Well, I cannot help that. The witness spoke plain enough.

BY MR. ELY:

Q And what did the defendant do, after Galbert left the room? A He lied on the couch; he continued to lie on the couch.



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Q And were you present during the whole performance that you have described? A Yes, sir.

Q Are you sure that this defendant is the person who submitted to the acts that you have just described, as performed by Galbert?

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

THE COURT: The form of the question is objectionable, the word "submitted". Ask him the plain question: Is he sure that the defendant is the person that performed the acts with Galbert that he has described.

BY MR. ELY:

Q Are you sure that the defendant is the man who performed the acts with Galbert that you have described? A I am.

Q Now how is the room, at the northwesterly corner of these premises, in which you state these acts occurred, lighted, if at all? A Well, at that time it was lighted by the light from the room adjoining.

Q And how far from the doorway--- there was a doorway connecting this room with the room adjoining, was there not? A Yes, sir, there was.

Q And was the adjoining room brilliantly lighted or otherwise?

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

BY THE COURT:

Q Describe how it was lighted? A Well, it was lighted
very brilliantly.

BY MR. ELY:

Q And how far from the doorway were these couches,
about, on which you state that the defendant and Galbert were
lying? A A few feet; three or four feet.

Q And what was the-- describe whether it was dark or
light at the point that these two defendants were lying on
this couch, in this northwesterly cooling room? A Very
light.

Q Now, after you saw the defendant lying there, subse-
quent to Galbert's departure from this northwesterly room,
what happened? A Why, nothing happened then. He continued
to lie there.

Q And did you leave the room? A No, sir; not for about
-- I left about ten minutes afterwards.

Q And during that time you were watching the defendant
there?

A Yes, sir.

Q And, when you left the room, what happened then?
When did you next see the defendant? A I saw him in the par-
lor of the bath corralled with a number of other men, round-



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ed up by the police officers that had entered.

Q And when he was in the parlor of this bath, as you state, was he dressed or undressed? A He had a sheet on him; naked, with the exception of a sheet.

Q And then what happened? A Why, they were passed before the officers who were in the bath, one by one, and as they come along each officer picked out the man he wanted. I said, "I want that man".

Q I want what man? A This defendant.

Q This defendant? A Yes, sir; that's the man. Officer Fitzsimmons said "I want that man."

Q What man? A That defendant, also.

Q Yes. Now, under what circumstances did you go to the Ariston baths on the night of the 21st of February, 1903

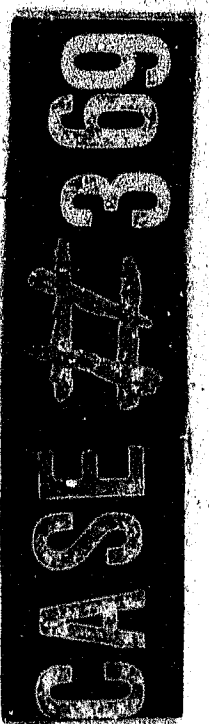
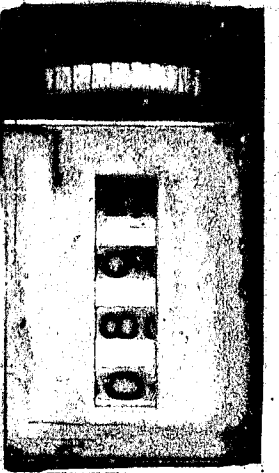
A About instructions from---

MR. GREENTHAL: One moment. I object to that, if your Honor please. I object to the form of the question.

THE COURT: I sustain the objection to that form of the question. Ask the officer if he went there in pursuance of instructions from his superiors.

BY MR. ELY:

Q Did you go to the Ariston baths, on the evening of the



21st of February in pursuance of any orders?

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

THE COURT: Allowed.

MR. GREENTHAL: Exception.

A Yes, sir.

BY MR. ELY:

Q Under whose orders?

MR. GREENTHAL: Objected to.

BY THE COURT:

Q Was it under the orders of your superior officers?

A Yes, sir.

BY MR. ELY:

Q And under whose orders were you acting during the whole
time that you were at the Ariston baths on the night of the
21st of February, and the morning of the 22nd?

MR. GREENTHAL: I object to that, as immaterial
irrelevant and incompetent.

THE COURT: I sustain the objection. Ask him
what officer was in command and control of the
police officers there.

BY MR. ELY:

Q What officer was in command and control of the police

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officers sent there, to the Ariston baths, on the evening of the 21st of February? A Acting Inspector Walsh.

Q And did you see him after you went to the Ariston baths? A Yes, sir.

Q At half past nine on the evening of the 21st of February? A I next saw him at about a quarter of two.

Q And where did you see Acting Inspector Walsh? A He entered the baths. I found him in the office.

Q And was he alone or accompanied? A He was accompanied by a number of other officers.

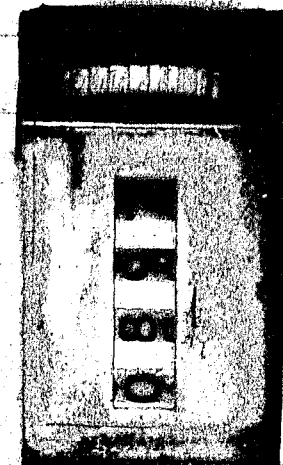
Q And then it was that you state that this defendant and others were put into the parlor? A Yes, sir.

Q And he was picked out by you and Fitzsimmons? A Yes, sir.

Q Do you know who actually took him into custody? A Well, the officer in the case was Officer Carley, John Carley, a member of the 22nd precinct.

Q Do you remember who took him to his dressing room, to dress, to hand him over to Carley? A I don't know. I think it was Officer McCutcheon.

Q You are not sure about that? A No, sir.



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CROSS EXAMINATION BY MR. GREENTHAL:

Q You say you were under Inspector Brooks or Walsh, at least? A Yes, sir.

Q A special detail? A Well, I don't understand your question.

Q Were you specially detailed to his staff on that occasion? A Yes, sir-- no, not on that occasion.

Q Well, how long had you been under Inspector Walsh?
A At that time?

MR. ELY: Objected to as immaterial.

THE COURT: Allowed.

BY MR. GREENTHAL:

Q How long? A Well, that was the first day I was in the office.

Q The first day? A Yes, sir.

Q Well, what time did you arrive at the baths? A About nine o'clock.

Q About nine o'clock? A Yes, sir.

Q Did you see the defendant enter the baths? A No, sir, I did not.

Q You did not? A No, sir.

Q When, for the first time, did you see Officer Fitzsimmons that night? A Why, he arrived at the baths about 9:30.

Q And you say that you got there at nine? A Yes, sir;

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I was there first.

Q Now, when for the first time did you see the defendant, Bennett? A Why, I think it was about 10 o'clock.

Q About 10? A Yes, sir.

Q You testified in the Police Court, did you not?

A Yes, sir.

Q Do you remember this question being asked of you, and answered by you: "What time did you see the defendant Bennett?

A I seen him at various times from nine o'clock until 3:30."

Did you make such an answer? A Yes, sir; I had no means of telling the exact time.

Q Well, now, how long after you arrived there? You say you got there at nine o'clock? A Well, I should judge it was about an hour.

Q About an hour after? A Yes, sir.

Q And where did you find the defendant at that time?

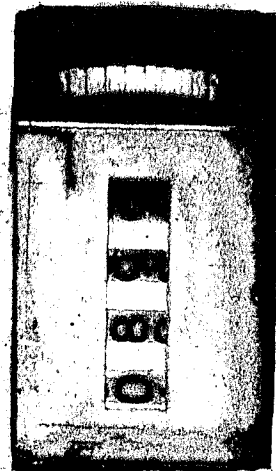
A Why I saw him in the parlor and I saw him all over the baths, walking all over, from room to room.

Q Walking around? A Yes, sir.

Q And when you first saw the defendant, did you speak to him? A No, sir.

Q Were you undressed when you met him in the hall?

A Yes, sir, I was; with the exception of a sheet.



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Q Well, what time was that? A Why, about ten o'clock.

Q About ten o'clock? A Yes, sir.

Q Between half past nine and ten o'clock, did you see Officer Fitzsimmons? A I did.

Q Did you speak with him? A Yes, sir.

Q Was officer Fitzsimmons with you, at the time you spoke to the defendant?

MR. ELY: I object. There is no testimony that this officer spoke to the defendant first.

MR. GREENTHAL: Well, if he spoke to him at any time. He says he spoke to him there.

THE COURT: Answer the question.

A Well, I spoke to him-- he spoke to me, rather, at eleven o'clock.

BY MR. GREENTHAL:

Q Well, was Officer Fitzsimmons there, at that time?

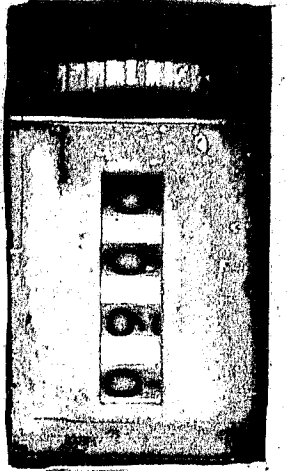
A Yes, sir.

Q And in what part of the building was that conversation had? A In the parlor.

Q How close was that to the office? A Why, it is right near the office.

Q Right close to the office? A Yes, sir.

Q And where is this northwesterly room situated? A Why, that is at the other extreme westerly end of the baths.



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Q At the westerly end of the baths? A Yes, sir.

Q Now, don't you know the name of the officer that went with the defendant to the dressing room? A I didn't take particular notice of that, no, sir; I believe it was Officer McCutcheon.

Q Officer McCutcheon? A Yes, sir.

Q Now, when you got into that room, Officer, did you find other people in that room besides the defendant? A Which room do you refer to?

Q The northwesterly room? A Yes, sir, I did.

Q How many persons? A Why, there were between ten and fifteen, I should judge; I didn't count them.

Q Could you distinguish those different people? A Yes, sir.

Q Could you tell them by face? A Yes, sir.

Q Did you place any of those people under arrest?

A I don't remember placing any of them under arrest.

Q Don't you remember whether you did or not? A Well, I don't recall now whether I did or not.

Q You don't recall? A No, sir.

Q How many arrests did you make?

MR. ELY: Objected to as immaterial.

THE COURT: Allowed.

A Why I am interested, I think, in some nine cases.

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BY MR. GREENTHAL:

Q How is that? A About nine.

Q How many other officers were in that cooling room besides yourself and Officer Fitzsimmons? A Well, which cooling room?

Q The northwesterly room? A Why, I saw Officer McCutcheon coming from that room when I entered.

Q Any other officers? A Officer Fitzsimmons was with me, going in.

Q Now you were a witness in the Schnittel case, weren't you? A I was.

Q Do you remember what time you left the room when you discovered Schnittel?

MR. ELY: Objected to.

THE COURT: I sustain the objection.

BY MR. GREENTHAL:

Q Now, Officer, how far is the room in which you found Schnittel from the room in which you discovered Bennett? How far is the distance between the two rooms?

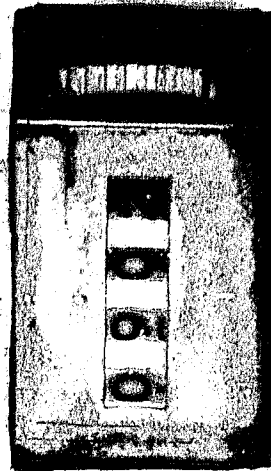
MR. ELY: Objected to.

THE COURT: I will overrule the objection.

A What is the question again.

BY MR. GREENTHAL:

Q (Question repeated). A Why, it is about fifty feet, I think.



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Q And how long would it take you to walk 50 feet?

A A few minutes; probably a minute; about a minute.

Q Do you know what time you left that room, the Schnittel room?

MR. ELY: Oh, I object to that.

MR. GREENTHAL: I think it will be very material to fix the time, if your Honor please.

THE COURT: I will allow the question.

A About what time I left which room?

BY MR. GREENTHAL:

Q Schnittel's room? A Well, it was about 1:24; about that.

Q 1:24? A Yes, sir, about that.

Q And did you go direct to the northwesterly room, where you found Bennett? A Yes, sir.

Q How do you fix the time, Mr. Phelan? A I didn't fix it, only there was a clock on the wall and I looked at it occasionally.

Q Where was that clock situated? A In the corridor there, in the hallway.

Q In the hallway? A Yes, sir.

Q Did you look at the clock at that time? A Well, I don't know whether I looked at it at that time; no, sir.

Q You were also a witness in the Galbert case? A Yes, sir.

Q Do you remember this question being asked you and this answer being made by you---

THE COURT: No. You must omit that form of question. I will not permit that form of examination.

MR. GREENTHAL: Well, I withdraw that question then.

BY MR. GREENTHAL:

Q Do you know of your own knowledge, officer, where the defendant, Bennett, dressed? A How is that, sir?

Q Do you know where his dressing room was at that time? A No, sir, I do not.

Q You do not? A No, sir.

Q Now you speak of this parlor, where the defendant was picked out by you. Is that right directly off the office? A Yes, sir.

MR. ELY: Well, I object. There are two parlors. I object on the ground that it is too indefinite.

THE COURT: Well, I do not see that it makes any difference.

BY MR. GREENTHAL:

Q Were all the people who were arrested put in that parlor, that larger parlor? A Well, most of them. It was not

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large enough to hold all of them.

Q Well, about how many were put there? A I don't know.

Q Would you say 50? A I don't know.

Q 75? A I don't know.

Q 100? A No.

Q You can't tell?

MR. ELY: As I understand he says that he doesn't know whether there were a hundred or not.

BY MR. GREENTHAL:

Q Do you believe that there were less than 75? A Yes, sir.

Q How many people were placed under arrest, that night?
A Thirty-four, I believe.

Q And weren't there 75 placed under arrest and 34 held out of them? A Yes, sir, I think so.

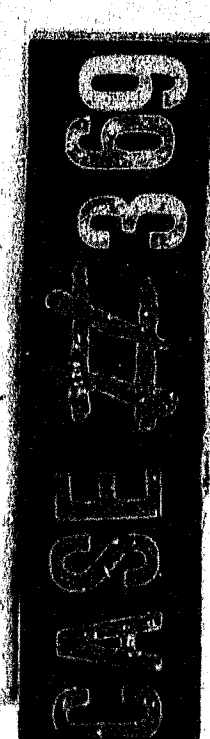
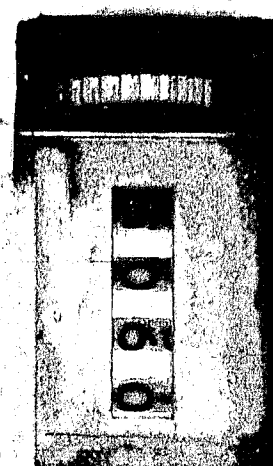
Q Now, at the time these people were placed in the large room, they were all undressed? A Yes, sir.

Q They merely had a sheet around them? A Yes, sir.

Q And you made your identification as these people passed out? A Yes, sir; one by one.

Q None of them had their street clothes on? A No, sir.

Q Were these prisoners allowed to go to their rooms, to dress? A Yes, sir.



Q And what became of the prisoners after they were dressed? Where were they placed? A They were taken out, in company with officers, and placed in the patrol wagon.

Q So that you didn't have Bennett under your supervision at all times; did you? A Not after he was placed under arrest; no, sir.

Q After you identified a man coming out of that large parlor, in a sheet, you lost sight of the defendant? A Yes, sir.

Q Do you remember appearing in the West Side Police Court? A I do.

Q They have quite a large pen there, haven't they?

MR. ELY: I object.

MR. GREENTHAL: I will lead up to it if your Honor please.

THE COURT: He may answer the question.

A Yes, sir; they have.

BY MR. GREENTHAL:

Q And you were in this Police Court? A Yes, sir.

Q And you went to this pen with the other officers in the case, did you not? A Yes, sir; on the following day.

Q For the purpose of identifying your prisoner? A No, sir.

Q Did you go there with Officer Fitzsimmons? A Yes, sir.

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Q And officer McCutcheon? A Yes, sir.

Q Did you then and there have a dispute with Fitzsimmons and McCutcheon as to who your prisoner was? A No, sir.

Q You did not? A No, sir; positively not.

Q Now, Officer, you say that you went into this westerly room at about 1:24? A About that time.

Q And how long had you been in that room before Officer-- before Galbert entered the room? A Why, he was in the room when I entered.

Q Galbert was in the room? A Yes, sir.

Q At the time you entered? A Yes, sir.

Q What was the first thing that attracted your attention to Bennett and Galbert? A Galbert was standing alongside of me, against the wall against the---

BY MR. ELY:

Q Galbert?

MR. GREENTHAL: One moment. Let him testify.

A (Answer continued) And he walked over across to the couch where the defendant was laying.

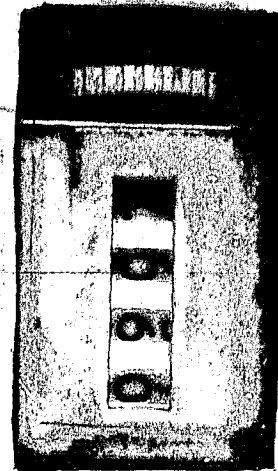
BY MR. GREENTHAL:

Q You say that Galbert was standing against the wall?

A Yes, sir.

Q How close to you? A Right next to me.

Q And how close to Bennett was he at the time? A Oh, about three or four feet.



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Q And how long did Galbert stand alongside of you before he approached Bennett? A A few minutes.

Q What do you call a few minutes? A Three or four minutes.

MR. ELY: Well, I object, if your Honor please. A few minutes are a few minutes.

THE COURT: Well, proceed.

BY MR. GREENTHAL:

Q A few minutes? A Yes, sir; a few minutes.

Q Well, won't you say whether it was one or two or three or four or five minutes? A No, sir; two or three minutes.

Q And then, right in your presence Galbert went over to Bennett, raised this man's legs-- is that right? A Yes, sir.

Q And you say-- was Galbert standing at the time?
A He was leaning forward a little, slightly.

Q He was leaning forward, and he inserted his penis in this man's anus; is that right? A Exactly.

Q Now, can you tell us how high that couch was, at that time? A It was about two or three feet.

Q Just measure there (indicating the witness chair)?
A Just about as high as this chair, or a little higher (indicating the witness chair).

Q And Bennett was reclining on that lounge? A He was.

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Q Now, Galbert is quite a tall man, ain't he? A Yes, sir.

Q Now, will you kindly stand up, Mr. Officer? Now you say that the couch was right below your knee? A Oh, it is a little higher than this chair.

Q A little higher? A Yes, sir.

Q Above or below your knee? A Above.

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

Q Did you go close up against the couch? A Yes, sir.

Q Did you stand up against it? A Yes, sir.

Q Were you standing up against that couch, when Galbert inserted his penis in this man's anus? A Yes, sir, I was.

Q And did Galbert see you there, then? A He must have seen me.

Q Well, did he? You were standing there?

MR. ELY: Objected to, as a conclusion.

BY MR. GREENTHAL:

Q Did he look at you while you were standing there?

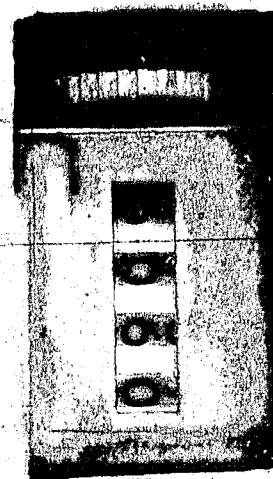
A I don't know whether he did or not.

Q Now, where was Officer Fitzsimmons, at that time?

A Standing right alongside of me.

Q Now, were you standing towards the door or the wall, at the time? A I was standing right alongside of Galbert.

Q On which side? Right or left? A Toward the door.



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Q You are sure about that? A Yes, sir.

Q Now, after he inserted his penis, as you say, in this man's anus, what did Galbert do with Bennett's legs? A He had ahold of it in his arms like that (illustrating), that way.

Q Held out all the time? A Yes, sir.

Q Now, did you get down close, to see the penis enter the anus? A I leaned over slightly, yes.

Q You did? A Yes, sir.

Q And how far did you stoop over? A Slightly forward.

Q And you swear positively that you saw that penis enter that anus? A Yes, sir.

Q There is no question about that? A No, sir.

Q And how long did it remain in the anus, if you know?
A A few moments.

Q And after it was drawn out, what was its condition?

A In a state of collapse.

Q Yes. Right then and there? A Yes, sir.

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

Q That it was in a state of collapse? A Yes, sir.

Q And, after that transpired, what took place? A Why, Galbert laid down on the couch with the defendant and placed his arms about him, and this defendant and Galbert kissed one

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another several times.

Q Kissed one another several times? A Yes, sir.

Q And were you still standing there? A Yes, sir.

Q And this was all done in your presence, and in the presence of Officer Fitzsimmons? A Yes, sir.

Q And these ten or fifteen other people were in the room?
A Yes, sir.

Q Now, when the penis was withdrawn from Galbert's mouth, what was its condition? A It was limp, in a state of collapse.

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

Q Was it entirely collapsed at that time? A Well, I don't know.

Q How is that? A I say, I don't know that.

Q Well, now, the jury want to know? A It was in a state of collapse.

Q Well, what do you call a state of collapse? A It was limp.

Q It was limber?

THE COURT: No, no. You have mistaken the word used by the witness. He said one word and you used another.

MR. GREENTHAL: Yes, sir. I didn't quite catch

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BY MR. GREENTHAL:

Q What was its condition, Officer? A It was limp.

Q Yes. Now did you then and there place these defendants under arrest? A No, sir, I did not.

Q You did not? A No, sir.

Q Did you and Officer Fitzsimmons remain in that room?

A Yes, sir.

Q For how long a time? A Why, for about ten minutes. I remained there ten minutes.

Q You remained there about ten minutes.

Q Did officer Fitzsimmons remain there with you?

A Yes, sir.

Q And Galbert and Bennett continue to remain in that room? A Why, he laid down on the couch for a little while, and then got up and went out.

Q Who went out? A Galbert.

Q Galbert left? A Yes, sir.

Q Did you follow Galbert out? A No, sir.

Q Did Officer Fitzsimmons? A No, sir. we both watched him leave the room.

Q Now did you remain in the room until Bennett got off the couch? A No, sir, I did not.

Q Did you leave the room before Bennett got off the couch? A I did.

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Q With Officer Fitzsimmons? A Well, I left alone. He left after me.

Q You say you went first? A Yes, sir.

Q How long after Galbert had left? A About ten minutes.

Q About ten minutes? A Yes, sir.

Q Afterwards? A Yes, sir.

Q Do you know when the raid took place? A Yes, sir.

Q What time? A It was about a quarter to two.

Q About a quarter of two? A Yes, sir.

Q How soon after you left that room did the raid take place? A About ten or fifteen minutes.

Q About ten or fifteen minutes? A Yes, sir.

Q Now, let us see. You say that the raid took place at a quarter of two? A Yes, sir. You are mistaken.

Q You said that at a quarter of two the raid took place? A Yes, sir.

Q And you entered the dark room about 1:24? A Yes, sir.

Q And you remained in that room something like ten minutes before this act was committed? A No, sir.

Q Now, how long after you entered that dark room, the northwesterly room, was this act committed? A A few minutes.

Q A few minutes? A Yes, sir.

Q You remember testifying a moment ago, that you stood

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alongside of Galbert, against the wall? A I did.

Q For a few minutes? A Yes, sir.

Q So that, as soon as you entered the room, almost within two or three minutes, this act was committed? A Yes, sir.

Q Is that right? A Yes, sir.

Q That would bring the time up to about 1:28? A About that.

Q And how long a time elapsed between the time that they committed the act that you have described, and when you left the room? A About ten minutes afterwards, I left.

Q And so that would bring it up to about 1:38? A About that, yes.

Q And you have testified that you remained in the room ten minutes after the act was committed? A Yes, sir.

Q That would make it 1:48?

MR. ELY: Oh, no. I object, if your Honor please.

MR. GREENTHAL: That is the testimony, if your Honor please.

THE COURT: Well, I do not see that there is any necessity in wasting so much time in minutes.

BY MR. GREENTHAL:

Q That is 1:48, is it not?

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MR. ELY: I object. It is purely a question of computation, and I object to it as immaterial.

THE COURT: Well, how does it become material, as to a minute?

MR. GREENTHAL: It is very material. It is a question of minutes here, if your Honor please.

BY MR. GREENTHAL:

Q What part of the building were you in, Officer, at the time the raid took place? A I was going out in the hallway.

Q Did you still have that sheet thrown around you?

A Yes, sir.

Q And when you made the identification of these defendants, or this defendant, did you have that sheet on you?

A No, sir.

Q You were then dressed? A Yes, sir.

Q Well, now, how long did it take you to dress? A A few minutes.

Q Well, a few minutes. You mean two minutes or five minutes? A Two or three minutes.

Q Now, Officer, how many other couches were in this room, the northwesterly room, besides the couch on which you say you found the defendant, Bennett? A There were three

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other couches.

Q Were there other people lying on the couches? A Yes, sir.

Q And other people standing alongside of the couches?

A Yes, sir, around about the wall, yes.

Q And how large a room was this, officer? A Well, I should judge it to be about 15 by 20; about that; I don't know.

Q And these people that you speak of, these ten or fifteen people, besides the officers, in this large room, were they walking about? A No, sir; they were standing around the wall.

Q Against the wall? A Yes, sir.

Q And some were lying on the couches? A Yes, sir.

Q Now, did any person---

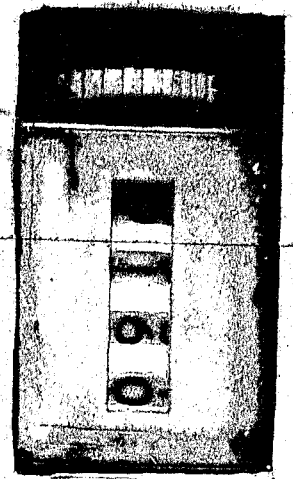
MR. ELY: I object, if your Honor please, to the counsel adding, "and some were lying on the couches." That has not been testified to.

BY MR. GREENTHAL:

Q I ask you again, Officer, were there any persons lying on the couches? A Yes, sir; on the two westerly couches, yes.

BY MR. ELY:

Q And those were the defendant and Galbert; weren't



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they?

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MR. GREENTHAL: I object to your testifying.

MR. ELY: I object to your testifying, that's all.

BY MR. GREENTHAL:

Q Now, officer, how large a passage way is there between this outside room and this northwesterly room? A Why, it is a very large passageway, the whole width of the room.

Q And is there anything between the passageway?

A Portieres, yes.

Q And does that screen the light from entering that room? A No, sir; they were drawn aside.

Q They were drawn aside? A Yes, sir.

Q Do you remember this question being put to you:

"Q Was this room dark?" And your making this answer:

"A Absolutely dark, except the light that shone overhead?"

MR. ELY: Objected to.

THE COURT: Yes. This form is not proper, this form of question.

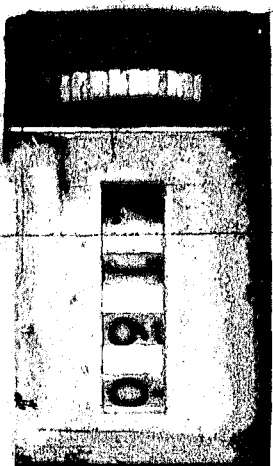
MR. GREENTHAL: Well, I will take an exception.

BY MR. GREENTHAL:

Q Do you remember this question being put to you in the Police Court---

THE COURT: When and where?

MR. GREENTHAL: In the Police Court, on the



day the defendant was arraigned?

THE COURT: Now, what testimony that this witness has given here do you seek to show a contradictory statement of; you must lay the foundation, counsellor.

MR. GREENTHAL: Well, I have laid the foundation, sir. I want to show a contradictory statement about the light.

THE COURT: Then ask the question directly, as to what he testified to here.

BY MR. GREENTHAL:

Q Did you not testify there---

MR. ELY: Objected to.

THE COURT: Excluded.

MR. GREENTHAL: Exception.

BY MR. GREENTHAL:

Q You testified a moment ago that the room in which you found the defendant was brilliantly lighted? A Yes, sir.

Q Now was this question asked you in the Police Court, when the defendant was arraigned before the City Magistrate, City Magistrate Pool: "Q Was this room dark"? And did you make this answer to that question: "A Absolutely dark". Did you make that answer? A Well, continue and see what I said, after.

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Q "Except for the light that shone over the portieres"?

A No, sir, I didn't say that at all.

Q You did not? A No, sir.

BY THE COURT:

Q As I understand it, Officer, you state that the room, the particular apartment in which you say the transaction in which you have described took place, had not lights in it, of itself? A No, sir.

Q But that there was light in the room, reflected from lights in an adjoining room? A Yes, sir, exactly; that is it.

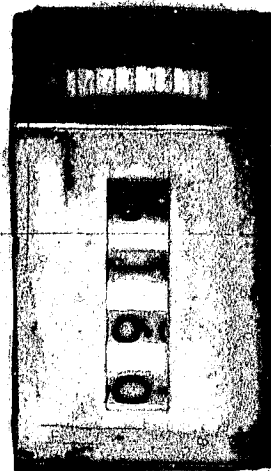
Q What was the nature or condition of the walls that partitioned or separated the room where you say the transaction took place from the room in which the light shone? A Why, there was a large doorway, the whole width of the room, on which there was a pole hanging across.

Q What? A A curtain pole across the top, and there were portieres hanging from the pole, drawn aside to the wall.

Q So, then, this large doorway, the width of the room, was, practically speaking, unobstructed? A Yes, sir, exactly.

Q And through this doorway the light streamed? A Yes, sir; in a direct line; a flood of light came through the door.

MR. ELY: If your Honor please, I asked counsel



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for the defense to give me the page from which he is purporting to quote the testimony of this witness, in the Police Court, which he says is in contradiction. I am informed by associate counsel there that it is page 8. On page 8 is the cross examination of another witness, not this witness at all. Therefore, I have been asking the examining counsel for the page that he purports to quote from, in asking this witness his questions, and I get no answer. I think it is objectionable, and I think that he should be obliged to give me the page.

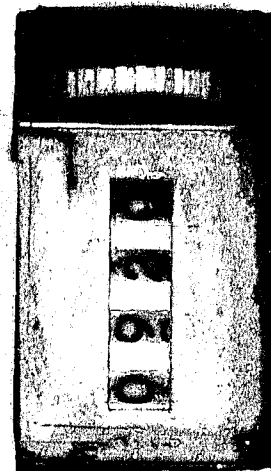
THE COURT: Mr. District Attorney, there is nothing before the Court to show that the counsel is quoting from anything.

MR. ELY: He is reading a paper.

THE COURT: Well, that may be his private memorandum, for all that I know. There is nothing before the Court whatever to show what it is. Now, gentlemen, I wish you would progress with the examination.

BY MR. GREENTHAL:

Q Officer, did you at any time after you left this north-westly room, return to that room again? A No, sir, I did not.



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Q You did not? A No, sir.

Q When did you see Officer Fitzsimmons, after you left that northwesterly room? A I next see him when he was dressed; shortly afterwards.

Q What part of the building? A He was also going into the parlor.

Q Where the prisoners were? A Yes, sir.

Q Officer, do you know a person by the name of Lawrence?
A We have arrested a person that night that gave that as his name.

Q Do you know who made the arrest?

MR. ELY: I object to that, as immaterial.

THE COURT: I sustain the objection.

BY MR. GREENTHAL:

Q Did you see the prisoner Lawrence?

MR. ELY: I object to that as immaterial.

THE COURT: It is immaterial. I sustain the objection.

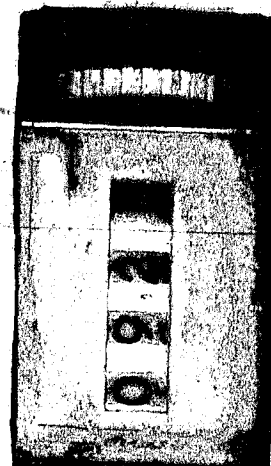
MR. GREENTHAL: Exception.

BY MR. GREENTHAL:

Q Do you know who identified Lawrence on that night?

MR. ELY: I object to that as immaterial.

THE COURT: Objection sustained. It is immaterial.



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MR. GREENTHAL: I will take an exception.

BY MR. GREENTHAL:

Q Do you know whether or not there was a man by the name of Lawrence there that night?

MR. ELY: I object to that as immaterial.

THE COURT: I will sustain the objection.

MR. GREENTHAL: I except.

RE DIRECT EXAMINATION BY MR. ELY:

Q Now, Phelan, why didn't you place this defendant under arrest immediately after you had seen the act that you have described occur, between him and Galbert?

MR. GREENTHAL: That is objected to. The form of the question is objectionable.

THE COURT: I will allow the question.

MR. GREENTHAL: Exception. Did your Honor hear the entire question? Why?

THE COURT: Yes.

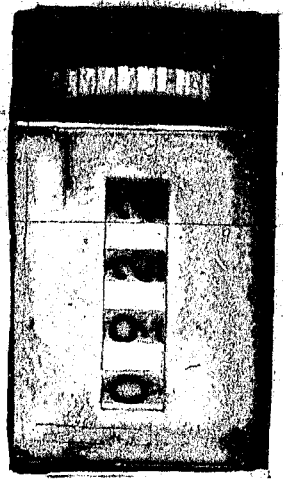
A I was under instructions from my superior officer.

BY MR. ELY:

Q Go on. what? A Not to place anyone under arrest.

MR. GREENTHAL: I object to that. That is giving a conversation now.

THE COURT: No; he is simply stating the facts.



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I do not consider that it is very material.

MR. ELY: No, sir. But they asked that question themselves, as to why he did not place him under arrest immediately; and now I want to show why he did not.

THE COURT: I will permit you to do so.

BY MR. ELY:

Q Why not? A I was acting under instructions from my superior officer.

BY THE COURT:

Q To do what? A To hold any evidence until the Acting Inspector entered the premises.

BY MR. ELY:

Q And that is the reason why you did not place him under arrest? A Yes, sir.

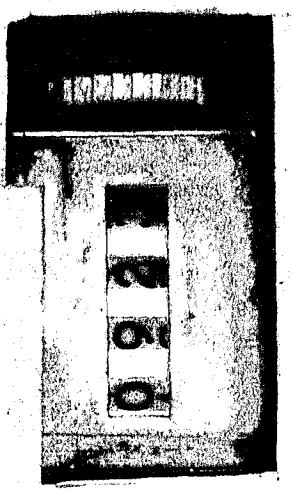
MR. GREENTHAK: I move to strike that out, as immaterial, irrelevant and incompetent.

THE COURT: No; I will allow it.

MR. GREENTHAL: Exception.

THE COURT: It may go to the question of the officer's attitude in the performance of his duty, and it is proper that the jury should know all the facts and circumstances connected with the matter.

MR. GREENTHAL: Will your Honor give me the benefit of an exception?



THE COURT: Yes.

BY MR. ELY:

Q One other question. Did you ever know the defendant before that evening? A No, sir.

Q Did you ever have any trouble of any kind with him?
A No, sir; I never saw him before.

N O R M A N J. F I T Z S I M M O N S, a witness called
on behalf of the People, being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. ELY:

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

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

Q And who is the Inspector, or who was the Inspector
of the Fourth Inspection District, on the 21st of February,
1903? A Inspector Walsh.

Q And what, if anything, did you do on the evening of the
21st of February, 1903? A I visited the premises 1730 Broad-
way.

Q Is that in the County of New York? A Yes, sir.

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Q And what is that, at 1730 Broadway? A A Turkish bath, known as the Ariston baths.

Q And had you ever been there before? A Yes, sir.

Q When had you been there before? A On February 14 and 16.

Q And on the 21st of February did you go to the Baths alone, or in company with anybody? A I went there alone.

Q About what time did you get there? A About 9:30 P.M.

Q And what did you do when you got there? A I paid a dollar, and was assigned to a room and undressed, and took a bath.

Q And did you see anybody in those Turkish baths, in this Ariston establishment that you knew? A Yes, sir.

Q Who did you see? A I saw Officer Phelan, Hibbard, McCutcheon, Abbott, Connolly and Ward.

Q And did you see this defendant there? A Yes, sir.

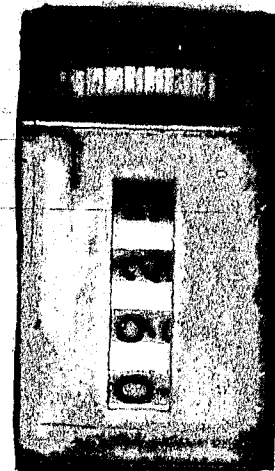
Q Had you ever seen this defendant before the night of the 21st of February, 1903? A Yes, sir.

Q When? A On the night of February 14th.

Q And where did you see him on the night of the 14th of February, 1903? A In the Ariston baths, 1730 Broadway.

Q New York County? A Yes, sir.

Q And did you hear any conversation that he had, on the night of the 21st of February, 1903, in the Ariston baths?



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A Yes, sir.

Q And who, if anybody, was with you when you heard any conversation with the defendant, Bennett? A Officer Phelan.

Q What was the conversation? A He invited Officer Phelan to---

THE COURT: No, just use his words, officer, as nearly as you can remember them.

A (Answer continued) He said to Officer Phelan, "Come to my room with me", and Officer Phelan says, "What for?" And he says, "To have a good time." I said to him, then, "May I go with you?" And he said, "No. I like a fat boy." So Officer Phelan said, "Well, I won't go with you now. I will meet you there at half past two."

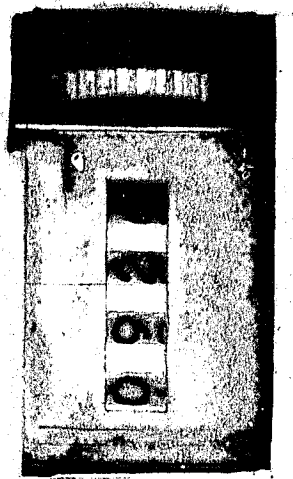
BY MR. ELY:

Q And in what condition of dress or undress was the defendant at the time that you state that he had this conversation with Phelan? A Naked, except for a sheet drawn around his body.

Q And how were you dressed? A Naked, except for a sheet.

Q And how was Phelan? A Naked, except for a sheet.

Q Did you observe the defendant in the bath place on this occasion before the conversation that you have just referred to? A Oh, I seen him there; I observed him, yes.



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Q What was he doing? A Oh, I didn't see him doing any more than walking around throughout the bath.

Q And how was he walking about? A He had a sheet so arranged upon his person that there was a train to it. That's all I seen about him.

Q You say you have been to those Turkish baths before?

A Yes, sir.

BY THE COURT:

Q Did the sheet trail upon the floor? A Yes, sir.

BY MR. ELY:

Q You have been to those Ariston Baths upon three occasions, you say? A Yes, sir.

Q I show you this paper, marked People's Exhibit 1 for identification, and ask you to look at that, and tell me if you know, what that is? A It is a diagram of those premises.

Q And do you know who made it? A Yes, sir.

Q Who made it? A I did.

Q And is that a correct representation of the rooms that constitute what is known as the Ariston Baths? A Yes, sir.

MR. ELY: Now, if your Honor please, I offer that in evidence.

MR. GREENTHAL: I object to it.

BY THE COURT:

Q What is this officer? Is it on a reduced scale?

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A Yes, sir; on a reduced scale.

Q Merely showing the location of the rooms? A Yes, sir of the different rooms; from memory.

Q Do you swear now that that is a correct drawing---

A From memory.

Q No. I ask you do you swear that that drawing shows correctly the location of the rooms as you observed them on that night and found them? A Yes, sir.

THE COURT: I will admit the paper.

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

May I ask the witness one or two questions, before your Honor admits that?

THE COURT: Yes; I will allow you to do so.

BY MR. GREENTHAL:

Q Have you all the doors and windows described on that plan? A No, sir; it is just an outline.

MR. ELY: It is simply given, sir, for the purpose of showing the location of the rooms in the bath, and the doors and windows are not essential for that purpose.

THE COURT: As to the interior?

MR. ELY: Yes, sir; that's all.

THE COURT: I will allow the paper in evidence.

MR. GREENTHAL: I will take an exception.

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THE COURT: Simply to enable the jury to form a correct understanding of the rooms and the location of the rooms, and their location as to each other.

MR. ELY: Relative location?

THE COURT: Yes.

MR. GREENTHAL: And we are entitled, your Honor, then to the doors and windows, the doors between the rooms.

THE COURT: I do not think that the windows come into consideration at all here.

MR. GREENTHAL: Well, then, the doors. We except.

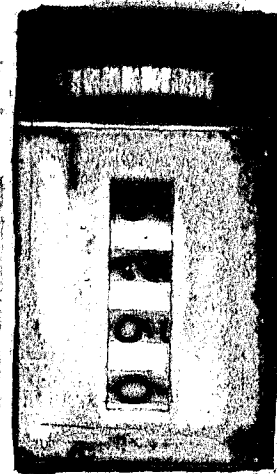
(The paper is admitted in evidence and marked People's Exhibit 1).

BY MR. ELY:

Q Now, subsequent to the conversation that you had, or which took place, between Phelan and this defendant, did you see the defendant again? A Yes, sir.

Q And where did you see the defendant? A In the northwest room of the rooms.

Q And what is that northwest room of the Ariston Baths establishment? A Why, it is a dressing room, with cooling coats in the center of it.



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Q Yes.

BY THE COURT:

Q Cooling cots? A Yes, sir; cooling cots or couches, in the senter of it.

Q Well, what do you mean by cooling couches? So that the jury will understand? A Well, they are wicker cots.

Q Are they cots for the bathers to rest upon?

A Yes, sir.

Q And cool off? A Yes, sir.

Q After taking their warm bath? A Yes, sir.

Q Is that what you mean? A Yes, sir; that is what I mean.

BY MR. ELY:

Q And what was this defendant doing in this northwest room? A Lying on one of these couches.

Q And were you with anybody when you saw the defendant lying on one of these couches, in this northwest cooling room of the Ariston baths? A With Officer Phelan.

Q And where were you and Phelan standing? A Towards the southerly wall of that room.

Q Now, then, mark on that diagram please, the point where you and Phelan were standing, and also mark the cot on the diagram of the room on which the defendant was lying when you and Phelan were there together and saw him? A He was ly-

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ing on the couch nearest the southerly wall (indicating).
This one here (indicating).

Q Well, now, just mark it. You have marked two couches there. Put "D" for defendant? A Yes, sir.

Q Well, now, was the defendant there alone, or was there somebody-- or did you see somebody else with him when you first went in there? A He was on a couch alone when we first went in the room.

Q And, subsequently, did anybody come up to the defendant? A Yes, sir.

Q And do you know who it was? A I have found out since.

Q And who was it? A George Galbert.

MR. ELY: I call for George Galbert.

(In response to the District Attorney's call for George Galbert, a man appears at the bar).

BY MR. ELY:

Q Do you see a person that you describe as George Galbert in Court? A Yes, sir.

Q Is that he (indicating Galbert)? A That's him.

Q Now what, if anything, did you see the defendant and Galbert do? A I seen the defendant Galbert approach the couch that the defendant Bennett was lying on.

BY THE COURT:

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Q The man Galbert and not the defendant Galbert?

A Yes, sir; the man Galbert; and place his penis in the anus of the defendant Bennett.

Q You use the word "anus". Can you use a term that may be readily understood by the jury? A Well, I seen him---

Q Can you use a word instead of "anus" that will describe what you say you saw in a way that may be more readily understood by the jurors? A I seen the defendant Galbert place his penis in the opening between the buttocks of the defendant.

Q Which is commonly called the rectum? A Yes, sir; commonly called the rectum.

Q Is that it Officer? A Yes, sir.

Q The rectum? A Yes, sir.

BY MR. ELY:

Q Well, in what condition was the penis of Galbert?

A In a state of erection, at the time.

Q And what did he do when he put it in the rectum of the defendant? A He made indecent motions, that is backward and forward motions.

THE COURT: Well, that is he made motions.

Leave out the indecent motions.

THE WITNESS: Yes, sir, he made motions.

BY MR. ELY:

Q And what happened then? A Well, they were on the couch

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for a very short time.

Q And what did they do then? A Well, they had their arms about one another, When the man Galbert took the penis of the defendant, Bennett, in his mouth, and worked his head backward and forward.

Q Did you notice the penis of the defendant, Bennett, when Galbert took it in his mouth, as you say? A Yes, sir; it was in a state of erection.

Q And did you notice the penis of Bennet when Galbert withdrew his head from it? A Yes, sir; it was in a state of erection.

Q And then what happened? A And then they laid back on the bed in a state of collapse, both the defendant Galbert and the defendant Bennett. I remained in that room for a short time afterwards.

Q What is that? A I remained in that room, for a short time afterwards.

Q Well, now, how was that room lighted, Officer?

A There was no light in the room, but there was a large doorway, with chenille curtains on it, and these curtains were drawn aside and the room adjoining this room was brilliantly lighted, and there was sufficient light coming through that doorway to enable one to see everything that was going on.

Q And now are you sure that this defendant here is the



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person that you have described as going through this business with Galbert? A Yes, sir.

MR. GREENTHAL: One moment. I object to the form of the question.

THE COURT: Yes. I sustain the objection.

BY MR. ELY:

Q Do you recognize this defendant as being the person that performed the act with Galbert that you have described?

A Yes, sir.

Q You are sure of it? A Positive.

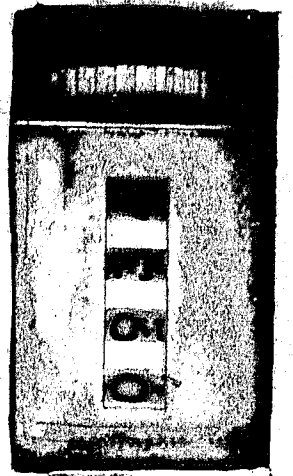
Q And when next did you see the defendant, after you had seen him performing these acts with Galbert? A I next saw him in the parlor of the premises where all the inmates of the bath had been corralled; and, as they were lined up for identification, as I identified him, Officer Phelan said "I also want that man".

Q And who took him off to dress, if you know, the defendant? Who took the defendant to his dressing room? A Why, Officer McCutcheon.

Q And at what hour did this occur? A Why, about 1:45.

Q When they were arrested? A About 1:45.

Q At what hour did the transactions that you have described take place, in this northwesterly cooling room, between this defendant and Galbert? A About 1:30 A. M. on the morning



of February 22nd.

Q About 1:30 A. M. on the morning of February 22nd?

A Yes, sir.

Q Now---

BY THE COURT:

Q Were there any other persons in the room, at the times that the witness has described? A Oh, yes. There were ten or more persons, patrons of the bath.

BY THE COURT:

Q bathers? A Yes, sir, bathers.

BY MR. ELY:

Q Now, under whose instructions did you go to the baths on that night, if anybody? A Under the instructions of Inspector Walsh.

Q Of your superior officer? A Yes, sir.

CROSS EXAMINATION BY MR. GREENTHAL.

Q What time did you arrive---

THE COURT: Just wait a moment.

BY THE COURT:

Q Officer, describe the posture of the body of the defendant, at the time that the man Galbert did to him what you have described?

A Why, the man Galbert was standing at the southerly

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wall and walked over to the couch of the defendant, and took the legs and brought them around in a position-- in a sort of square position of the legs.

Q Was the defendant lying upon his side or his back or his face? A Lying upon his side.

Q Upon his side? A Yes, sir.

Q At full length on this couch? A That is before the man Galbert took hold of his legs. At the time of the act he was not laying full length on the couch. He was in a sort of position like that (illustrating).

BY MR. ELY:

Q Crouched up? A Yes, sir; as to his legs.

BY MR. GREENTHAL:

Q What time did you arrive at the baths, officer? A About 9:30 P M. On the evening of February 21st.

Q And when you arrived there, did you find Officer Phelan? A Phelan was there.

Q And did you see him when you went into the bath? A I didn't see him immediately after going in. I seen him probably 15 or 20 minutes afterwards.

Q And when, for the first time, did you see the defendant Bennett? A On the evening of February 14th.

Q No. I mean on that evening. I am speaking of that evening. About what time? A About 11 o'clock.



Q Did you look at your watch? A No, sir.

Q How do you fix the time? A In my judgment. I had no means of fixing the time. I was naked.

Q Were you undressed at that time? A Yes, sir.

Q Now what part of the building was Bennett in at the time you met Officer Phelan and Bennett? A In the parlor, adjoining the buffet.

Q Is that the place where this conversation was that? A Yes, sir.

Q Now, tell us all that took place between Officer Phelan and the defendant, at that time. You were there and you heard everything? A I heard the conversation.

Q And you saw everything that transpired? A I could state the conversation.

Q Well, now, just tell everything that you saw and heard at that particular time? A The defendant asked Phelan to accompany him to his room and Phelan said "What for", and he said, "To have a good time."

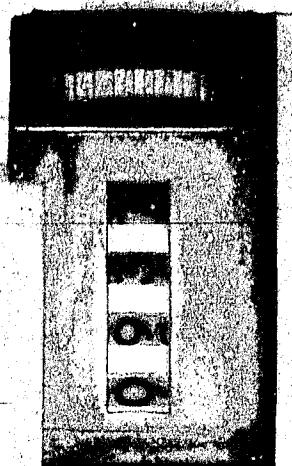
Q Yes. A I spoke up then and I said, "May I accompany you also?" And he said, "No. I like fat boys."

Q Well--

THE COURT: No. You asked him describe. Let the witness describe.

BY MR. GREENHAL:

Q Well, go ahead. A And then Phelan said, "Well, I am



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with him (indicating me)." "I will meet you at half past two.

Q And is that all you heard? A Yes, sir.

Q And now you have described everything that transpired at that time? A I walked away then.

Q Walked away with Officer Phelan? A No, sir; by myself. Officer Phelan was probably with him a second or two, or a moment more.

Q Now, officer, that is all that transpired as far as you know? A As far as I know, yes.

Q When next did you see Officer Phelan? A I was with him for the rest of the evening, that is---

Q Did you wait there until he came up to you? A Yes, sir.

Q Were you facing him all the time while he was talking to Bennett? A No, no.

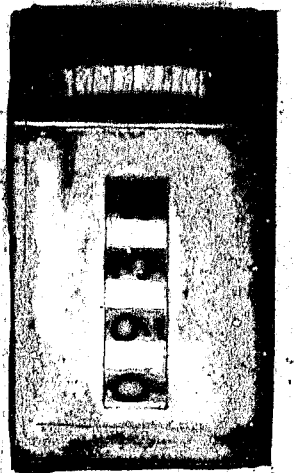
Q You were not? A No. Other things attracted my attention.

Q Oh, which way were you facing that time? A I don't remember.

Q You don't remember? A No, sir.

Q Now, do you remember going to a room occupied by a man named Schnittel? A No, sir.

Q Were you a witness in the Schnittel case?



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MR. ELY: I object.

THE COURT: He may answer yes or no.

A Yes, sir.

BY MR. GREENTHAL:

Q Didn't you testify in this case that you were in the Schmittel room? A No, sir.

MR. ELY: I object.

BY MR. GREENTHAL:

Q Was Officer Phelan with you at the time you were--- I withdraw that. Was Officer Phelan with you at all times up to the time that you went into Bennett's room? A No, not right alongside of me. We were through the baths, and we separated probably for a minute or two at a time.

Q Did you go direct with Phelan, when he entered the Bennett room, the room where Bennett was, the northwesterly room? A Yes, sir; the northwesterly room.

Q You went there together? A We followed one another into the room.

Q Who did you find in that room when you entered?

A The defendant and the man Galbert, and about ten or more people in the room.

Q Yes. And what were the other people doing; do you know? A Standing around; lying down.

Q Anyone walking about? A Yes, sir.

Q Some were walking? A Yes, sir.

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Q And where did you find Galbert at that time?

A Standing against the southerly wall.

Q How close to this couch? A Oh, two feet.

Q Was Galbert doing anything at the time? A Not as we entered.

Q Now, when you went into the room with Officer Phelan, where did you go? A Right to the left of the room, to the left hand side of the room, as we entered.

Q Is that the southerly side of the building?

A Yes, sir.

Q Of the room? A Yes, sir, of the room.

Q Now, what did you do when you got in there? A Stood there.

Q Well, how close to the cot? A Oh, a foot or more.

Q Were you standing between the cot and Galbert? A When we entered?

Q Yes. A Standing between the cot and Galbert?
I don't understand you.

Q Well, one moment. You say that, when you went in there you were standing one foot from the couch? A Or more, I said.

Q Or more? A Yes, sir.

Q Now, were you standing between the couch and Galbert,
A No; alongside of Galbert.

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Q On which side of him? A To the right of Galbert.

Q To the right? A Yes, sir.

Q So that the cot was to the left of Galbert? No;
it was in front of Galbert.

Q Oh, it was in front of him? A Yes, sir.

Q So that the cot was directly in front of you? A I am
speaking of when we entered the room.

Q So that the cot was directly in front of you? A Yes,
sir.

Q Was the cot up against the wall? A No, sir.

Q It was not? A No, sir.

Q Did you measure the couch? A No, sir.

Q Can you tell us how high that couch was, at the time?
A Oh, I should judge, two feet or two and a half feet.

Q Was it as high as the chair that you are sitting on?

MR. ELY: Well, if your Honor please, two or
two and a half feet is definite enough.

THE COURT: Well, he may give his opinion, in
answer to the question.

A Well, I should judge about the height of the seat of this
chair, or probably higher.

BY MR. GREENTHAL:

Q Well you were undressed, at the time you entered that
room? A Yes, sir.

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Q You had your sheet on? A Except for a sheet, yes.

Q And all the others in that bath were naked, except for a sheet? A Yes, sir; except for a sheet.

Q Now, when you entered that room, was Bennett facing you? A Yes, sir.

Q How long had you stood up against the wall, before Galbert approached Bennett? A Oh, a short time.

Q Well, four or five minutes? A Probably.

Q About five minutes? A Probably.

Q Did Galbert speak to Bennett? A No, sir.

Q He didn't say a word? A No, sir; no conversation was passed at all.

Q No conversation passed between them at all? A No, sir.

Q And Galbert raised Bennett's leg? A Yes, sir.

Q And you were standing there at that time? A Yes, sir.

Q With Officer Phelan? A Yes, sir.

Q In full view of Bennett and Galbert? A Yes, sir; and Galbert.

Q Did Galbert speak to you? A No, sir.

Q Did Bennett speak to you? A No, sir.

Q Or to your brother officer? A No, sir.

Q No conversation took place? A No, sir not at that

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time.

Q How high did Galbert raise Bennett's leg, if you know?

A I should judge eight or nine inches, or more.

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Q Did Bennett move, while lying on that couch? A Oh, shuffled a little.

Q Just a little? A Yes, sir; just placed himself in comfort, I should imagine.

BY MR. ELYF

Q Well, what did you say? A Shuffled himself, I should say, enough to place himself in comfort on the couch.

BY MR. GREENTHAL:

Q Now, if I understand you correctly, officer, Bennett was facing the southerly wall? A Yes, sir.

Q Now how large is that room? A About twenty--

Q In width? A In width?

Q Yes. A About 18 feet. And there is compartments on each side of the room, both on the north and south side of the room.

Q No. I mean the room itself, just the room itself.

A It is about 18 feet in width.

Q About 18 feet wide? A Yes, sir.

Q And how deep? A About 20.

Q About 18 by 20? A Yes, sir.

Q And you say that there were about ten or fifteen other people in that place, at the time? A Yes, sir; counting the compartments, it is about 18 feet. I don't mean that the space between the compartments is 18 feet wide.

Q Now how many feet was this couch from the southerly

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wall? A About two or more.

Q Two or more? A Yes, sir; that is, from the compartments, the doors of the compartments.

Q Well when you were standing-- you were standing up against the southerly wall, you say? A Yes, sir; against these compartments.

Q Oh, you were standing up against the compartments?
A Yes, sir. They are dressing rooms.

Q They are dressing rooms? A Yes, sir.

Q And so there was about two feet of space between where you were standing and where the couch was? A About that, or more.

Q Well about how much space was there? A About a foot.

Q Well, when you say Galbert placed his penis in the mouth of this defendant, did you stoop down and look? A Why, the light from the other room--

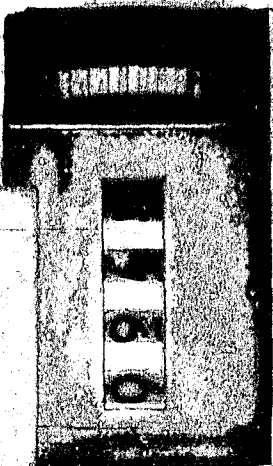
Q No, no. I am asking you that question. A From where I was standing, I could.

Q And you were standing erect? A Yes, sir.

Q And Officer Phelan was standing right along side of you? A Yes, sir.

Q Did he move? A No, sir, he did not.

Q He did not? A No, sir; not that I remember. I wasn't paying particular attention to him. I wasn't watching Officer Phelan. I was watching the defendant.



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Q Well, when you turned around was Phelan in the same position?

MR. ELY: Objected to, as assuming something that is not in testimony.

BY MR. GREENTHAL:

Q Did you, at any time, leave Officer Phelan's side?

A Not while the act was being committed.

Q Now can you tell how much time was consumed in going through this act, as you have described? A All told?

Q No. Just that one particular act.

THE COURT: Which particular act?

MR. GREENTHAL: He is only testifying as to one act, to the penis and the anus.

A Oh, a very short time.

BY MR. GREENTHAL:

Q Well, about how long? A Two or three minutes.

Q And, after the penis was withdrawn, did you look at it? A Yes, sir.

Q Closely? A Yes, sir.

Q Did you stoop over to look at it? A I didn't have to stoop over.

Q You did not? A No, sir.

Q Will you say that it was in a state of collapse?

A After he withdrew it from the anus of the defendant.

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Q Was it in an entire state of collapse? A No, sir; not entire state, but it was limber.

Q It was limber, you say? A Yes, sir.

Q And, after that was all gone through, what did Bennett and Galbert do? Before Galbert took the penis of this man in his mouth, what did they do? A They laid on the couch.

Q They laid on the couch? A Yes, sir.

Q And anything else? A Threw their arms about one another.

Q And how long a time did that last? A A very short time.

Q How many minutes? A Oh, I can't judge the exact time, but a very short time, though.

Q Would you say two or three minutes? A Yes, sir; and probably more.

Q And was Galbert facing you at the time, or was Bennett? A No.

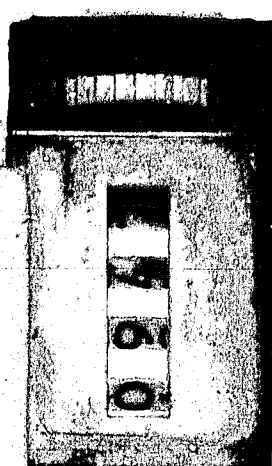
Q Well who was facing you at the time? A Bennett had moved over to the next couch.

Q Bennett moved away from that couch? A Yes, sir; and moved on to the next one. They both worked together.

Q Did Bennett face you at that time? A If I remember rightly, he did.

Q You were in full view, all the time? A Yes, sir.

Q He could have seen you, because you were standing right



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there? A Yes, sir.

Q And did Galbert move? A He lied down on one of those couches.

Q On the same couch with Bennett? A Two connecting couches.

Q No. Now did he lie down on the same couch with Bennett? A No, not on the same. The two couches were together.

Q But were they separate couches? A Yes, sir; they were together.

Q And how long do you say that they continued to embrace? Two or three minutes? A A very short time.

Q Did you see Bennett have his arms around Galbert?

A Yes, sir.

Q And did Galbert have his arms around Bennett? A I think he did.

Q Don't you know whether he did or not? A I think he did.

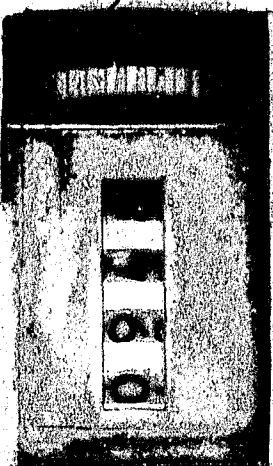
Q Is that the best answer that you can make? A Yes, sir.

Q Now who was the first person to stir, after they had embraced? A Why, Galbert, if I remember rightly.

Q Don't you know? A I will say Galbert.

Q Was Galbert on the couch nearer to you, or was Bennett nearer to you than Galbert? A Nearer to me?

Q Who was nearer to you? A Galbert.



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Q He wasn't facing you at the time? A No, sir.

Q Galbert was not? A No, sir.

Q How far did he move? A How do you mean? Who?

Q Well you say that you saw Galbert move on the couch.

How far did he move? A Why, he only moved his person, and reached down to where the penis of the defendant was.

Q Well how far down did he move? A Why, all the way down, to reach him.

Q And where were his legs, at the time? A Whose legs?

Q Galbert's? A He was in a coiled position on the couch.

Q Galbert was? A Yes, sir.

Q And how long a time elapsed? How long a time was consumed to do this particular act? A Oh, a very short time; probably two or three minutes, or more.

Q Did you then speak to Galbert and Bennett, after that act was gone through? A No, sir; I never spoke to them since.

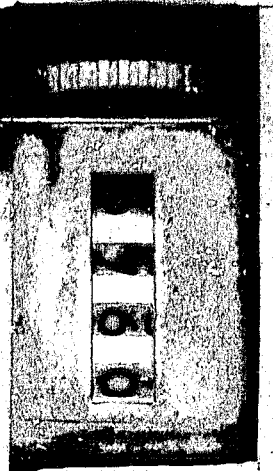
Q And did you continue to remain up against that wall?
A No, sir; not particularly up against that wall.

Q Did you leave the room right after that? A Went towards the door.

Q Did you see any one pass out, at that time? A Immediately after?

Q At any time while you were there? A Yes, sir.

Q How many persons passed out? A Oh,, half a dozen.



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And some entered.

Q Going in and coming out? A Going in and coming out, all the time.

Did

Q You arrest any other person in that room, besides Bennett and Galbert?

MR. ELY: I object.

THE COURT: I will allow him to answer the question.

A There was no person arrested in that room.

BY MR. GREENTHAL:

Q Now, Officer, how long after this all took place, as you have described it, did you leave the room? A About ten minutes or so, I should judge.

Q Who went out of the room first? You or Officer Phelan?

A If I remember rightly, Officer Phelan did.

Q Then you followed Officer Phelan, ten minutes after?

A About that time.

Q Did Bennett or Galbert at any time leave that room?

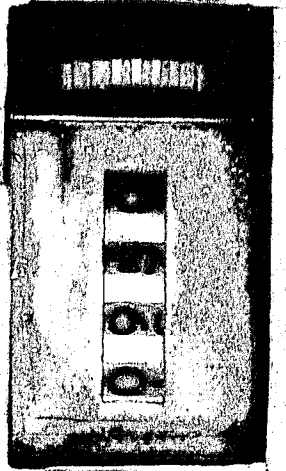
A Galbert did.

Q Galbert did? A Yes, sir.

Q Before or after Phelan left? A I couldn't say, sir.

Q Don't you know? A I wasn't paying any particular attention.

Q Didn't you have your eyes on these two people all the time that you were in that room? A Yes, sir.



Q You went into that building for a specific purpose; did you not? A Yes, sir; for that very purpose, acting under instructions.

Q Yes. Acting under instructions from your inspector?

A Yes, sir.

Q And now you want to say that you don't know whether Galbert left that room before Phelan, or not? A Well I would say that they both left the room together, passed out.

Q Now can't you say whether Galbert or Phelan left the room together? A They both left together.

Q side by side? A It is a door way, eight or nine feet wide.

Q And were they side by side when they left? A Yes, sir.

Q Are you positive of it? A Yes; I will be positive of that.

Q Did you see Galbert after that? A In the room, when the men were all corralled in the one room, at the time they were placed under arrest.

Q How many were corralled in the room? A About 75 or 100.

Q About 75 or 100? A Yes, sir.

Q Now you say that you remained about ten minutes after your brother officer left the room, with Galbert? A About that time.

Q Did you at any time speak to Bennett, after that?

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A No; never spoke to him in my life after that.

Q Now did you continue to stand against that wall?

A Well, I crossed over to the southerly wall of the room, at one time.

Q Did you speak to him at that time? A No, sir.

Q Did you at any time go to the rear of that room?

A Yes, sir; I have been to the rear of that room.

Q At that particular time? A No, sir; not at that particular time.

Q Now, Officer, after this raid was made-- you say that was about a quarter of two? A About that time.

Q All the persons found in that building or in that part of the building where these baths were, were all placed in the large parlor? A Yes, sir.

Q Were they all dressed or undressed? A Some were dressed and some were undressed.

Q From 75 to 100 people? A Yes, sir; about that.

Q And then I understand you to say that the people were taken out of this room, one by one? A In front of certain policemen, who had been sent in there.

Q I know. You officers were standing in a line, and, as these people passed out, you identified certain people? A Yes sir; the ones that we wanted.

Q Who was the first person that identified the defendant Bennett? A I believe I was.

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Q Well now aren't you positive about that?

MR. ELY: Oh, I object to that, as immaterial.

A Both officers identified him, and identified him at the same time.

MR. GREENTHAL: Now, I object to these interruptions. They are uncalled for.

MR. ELY: Why, if your Honor please, I have a perfect right to object, and it is not uncalled for. I object to the question as to whether this officer identified the man first, or some other officer.

MR. GREENTHAL: I object to the statement of the District Attorney. The very thing I wanted to bring out from this officer, he is bringing out in his statement.

THE COURT: Proceed, gentlemen.

BY MR. GREENTHAL:

Q Now, Officer, who was the first person that identified this man, Bennett? A Why, I might say that Officer Phelan and I identified him at the same time.

Q Now who was the first person that said, "I want that man"? A I believe I was.

Q You believe you were? A Yes, sir.

Q And was Bennett then in a sheet? A Yes, sir.

Q Did you take ahold of Bennett at the time? A No, sir.

Q Did Officer Phelan? A Oh, just took him and put him

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into another room, directed him to go to another room.

Q He went into another room? A Yes, sir.

Q How close was that to the room that he came out of?

A Eight or nine feet.

Q Do you know who identified Galbert? A I believe I identified him first.

Q Eh? A Eh? Oh, no. Galbert was identified in his room.

Q Wasn't Galbert in this parlor? A No, sir.

Q He was not? A No, sir.

Q Now, after Bennett had gone into the adjoining room that you speak of, did you enter that room? A No, sir; I never was in that room.

Q You never were? A Not at that time.

Q Did you see Bennett, from the time that you picked him out, up to the time that you saw him in the police court; did you see him at all? A Why, I seen him in the station house.

Q You saw him in the station house? A Yes, sir.

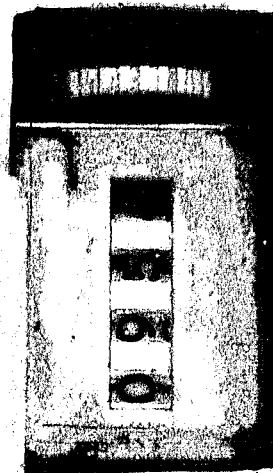
Q You saw him in the 54th street police court? A Yes, sir.

Q Did you speak to him in the station house? A No, sir.

Q You did not? A No, sir.

Q You found him among a lot of other prisoners? A Yes, sir; he was amongst the others that were identified.

Q And did you see him in the police court? A Yes, sir.



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Q And did you see him in the pen? A I seen him in the prison.

Q AIn the prison pen ? A Yes, sir.

Q Who was with you, at the time? A Officer Hibbard, Phelan, McCutcheon, and I believe Connolly and Ward were there, also.

Q Do you know an officer by the name of Anderson?

A No, sir.

Q You don't know him? A No, sir; I don't know any such officer.

Q Now, just before arraigning these different prisoners before the City Magistrate, did you go down stairs to the prison, to identify your prisoners? A No, sir.

Q Were they brought up stairs to you? A The day previous to that--

Q No. I am talking of the day of examination? A No, sir.

Q Now, we will get down to the day before the examination.

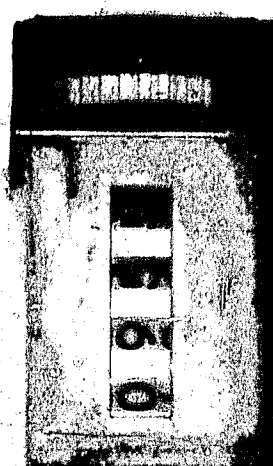
A Oh, I was down to the pen, to bring the prisoner up.

Q Yes, you were down there, with Officer Phelan?

A To bring the prisoner up.

Q (Question repeated.) A I don 't remember. I don't think so. I think I was alone.

Q Did you, at that time, have a dispute with Officer Phelan, or any other officer, as to who was your prisoner?



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A No, sir.

Q Did you have any difficulty in identifying the defendant and a person named Lawrence? A No, sir.

Q Do you know a person by the name of Lawrence? A Yes, sir.

Q Was he in the pen, at the time? A Yes, sir.

Q Do you know who arrested Lawrence?

MR. ELY: Objected to, as immaterial.

A No, sir.

Q You do not? A No, sir.

BY MR. GREENTHAL:

Q You do not? A No, sir.

Q Now, Officer, how long were you in this northwesterly room, with Bennett and Galbert, before the raid took place?

A About ten minutes or so.

Q About ten minutes or so? A Yes, sir.

Q How long were you in the room, with Bennett alone, before the raid took place? A Oh, five minutes, I should judge; a short time.

Q How long after you left that room-- after you left Bennett on the couch, did the raid take place? A A very short time.

Q Well how short? A Well I should judge ten minutes; probably less or more.

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BY THE SEVENTH JUROR:

Q Officer, you were there on the 9th also? What time have you stated? A No, sir; on February 14th; the Saturday night previous.

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

Q And didn't you say that you had never seen him before? A No, I haven't said that. I have stated in my testimony, on the District Attorney's examination, that I was there on the 14th, 16th and 21st, and that I had seen the defendant there on the 14th.

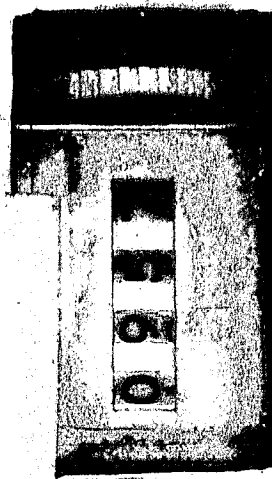
Q What did he say to you and your brother officer, to have a good time? What do you mean by that? What does he mean by that?

THE COURT: Well, Mr. Juror, we are not allowed to let a witness tell what he thought or believed was the meaning of another person's words. We have simply to take the words, as they are uttered, and it is for you, gentlemen, of the jury, to determine what the meaning was.

BY MR. GREENTHAL:

Q Mr. Fitzsimmons, you say that one room was lighted? A Yes, sir; the adjoining room to this northwesterly room.

Q And this room in which the act was committed, there was no light at all? A No, sir; absolutely none, from the



chandelier in that room.

Q Would you say that it was dark? A No, sir; I don't say it was dark. It was dark, except for the light that shone in from this other room.

Q And you say that the doorway was screened by portiers?
A Pulled aside.

Q How much space between the portiers? A Six or seven feet, I should judge.

Q And how high? A About ten.

Q And how high is the ceiling? A About twelve .

Q So the portiers were not quite up to the ceiling?
A No, sir.

Q There was a wall between them? A A sort of a transom.

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

DIRECT EXAMINATION BY MR. ELY:

Q Mr. McCutcheon, you are an officer connected with the Municipal Police Force of the City of New York? A Yes, sir.

Q And were such on the 21st of February, 1903? A Yes, sir.

Q On the 21st of February were you attached to the fourth

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inspection district? A No, sir; at the time I was connected with the 22nd precinct.

Q What did you do, if anything, on the evening of the 21st of February, 1903? A I went to the Ariston Baths, 1730 Broadway.

Q New York County? A Yes, sir.

Q And what time did you go there, about? A I went there about nine thirty.

Q Under whose instructions did you go? A Under Captain Schmittberger, Inspector now.

Q Yes. And did you see the defendant there? A I did.

Q When did you see him? A Why, I saw him about eleven p. m., the first time.

Q What was he doing? A He was in the hot room.

Q And did you have any conversation with him? A No, sir.

Q And where did you next see-- when you say the hot room, what do you mean? The warm room? A No, sir; the hot air room.

Q The vapor room? A No, sir; the steam room is where the steam rises.

Q Well, that is where the vapor is? A Yes, sir. But the hot air room is where the--

Q Where the dry heat is? A Yes, sir; where the dry heat is.

Q That is the Turkish room? A Yes, sir; the Turkish

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room.

Q And when next, after you saw the defendant in the Turkish room, did you see him? A I saw him in the vapor room, later on.

Q And when, after that did you see him? A Well several times, during the evening.

Q And what was he doing those times? A He was walking around through the different rooms. And I saw him in the westerly room, about one twenty, I should judge, laying on a cot.

Q In the westerly room? A Yes, sir.

Q What westerly room? A That is the most westerly room of the baths.

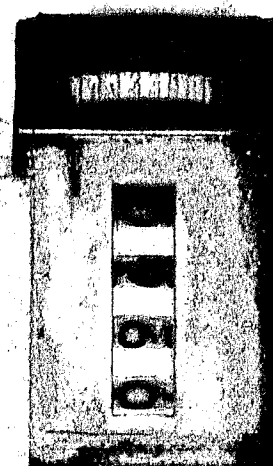
Q The northwesterly portion of the premises? A Yes, sir.

THE COURT: Mr. District Attorney, is it your purpose to show by this witness a similar state of facts as testified to by the two preceding witnesses?

MR. ELY: No, sir. I am going to show the acts of the defendant as he was--

MR. GRANTHAL: I object to this. I don't think it is fair.

THE COURT: Because, if you are going to show simply the same state of facts by this witness I



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would suggest an abbreviation of the testimony.

MR. ELY: Oh, no sir.

BY MR. ELY:

Q Just describe what the defendant was doing, as he was walking about the premises? A Well, on one occasion, he had a sheet arranged around his body in such a manner that it left a train behind.

MR. GREENTHAL: I object to that, "in such a manner".

THE COURT: Strike out those words.

BY THE COURT:

Q Describe the condition of the sheet? A Well there was a train behind, and he would lift it up, and show his legs, and go through certain motions, with his body. I could hardly describe the motions.

BY MR. ELY:

Q What? A I could hardly describe the motions that he went through.

Q And were there other people about, as he was walking about, trailing this sheet after him, and showing his legs and making the motions? A Yes, sir.

Q Did you notice what he was doing, as he was engaged in these practices? A None other than he acted in a feminine manner.

MR. GREENTHAL: I object to that, and move to

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strike it out.

THE COURT: I grant the motion, and sustain the objection.

BY MR. ELY:

Q And there were other people in the rooms, as he was walking around, conducting himself in the manner you have described? A There were.

Q And did you notice whether they were looking at him?

A They were.

MR. GREENTHAL: I object to that.

BY MR. ELY:

Q And was he looking at them?

MR. GREENTHAL: Objected to.

A Sometimes.

THE COURT: So far as he could observe.

MR. ELY: That was the preliminary part of my question.

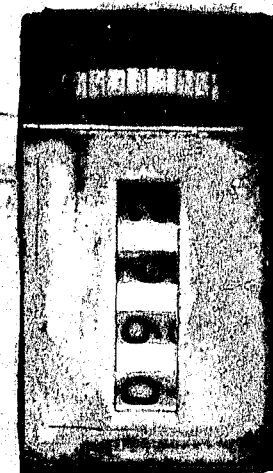
BY MR. ELY:

Q And do you know who took this defendant to his dressing room, after he had been identified? A Yes, sir.

Q Who did? A I did.

Q And did you have any conversation with him? A No, sir; none that I remember.

Q Oh, what did you do with him, after you took him to the dressing room? A He dressed, and I took him back into



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the room where the rest of the prisoners were.

Q And you left him there? A And I left him there.

(Cross examination none.)

MR. ELY: That is the People's case.

THE COURT: The case is with you, Mr. Greenthal.



OPENING ADDRESS FOR THE DEFENSE

of

MR. GREENTHAL.

If your Honor please, and

Gentlemen of the Jury:

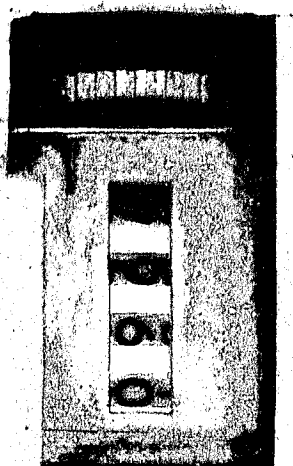
The defendants will take the stand, and he will tell you, gentlemen, that he arrived at that bath, on or about eleven o'clock, and not at the time testified to here by the officer.

You remember that one of the officers testified that the defendant arrived there about nine or half past nine.

The defendant will be corroborated by three or four witnesses, who will testify that he was at a certain house, on West 28th street, and that he left that house at about twenty-five minutes of eleven.

The defendant will testify that nothing, absolutely nothing, wrong took place between him and Mr. Galbert; and Mr. Galbert will take the stand, and he will also testify that there is absolutely no truth in any one statement made by either one of the two officers.

And I think that we will be able to prove, to your satisfaction, beyond any doubt, that this is a case, a



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clear case, of mistaken identity, as far as the defendant, Bennett, is concerned.

And I want to put upon the stand here people who have known Mr. Bennett for years, who will testify to his good character; one person, in particular, who has known him from childhood.

And I think he will satisfy you, beyond any doubt at all, that he is entirely innocent of any wrong doing; and that he never, at any time, committed this act, described by the witnesses who precede him on the stand.

And I think, if we prove that, that he will be entitled to an acquittal at your hands.

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THE DEFENSE.

W A L T E R A . B E N N E T T , the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q What is your business, Mr. Bennett? A Well I have been in the theatrical business, the hotel business, and a steward and a waiter; and I have been a caterer.

Q And what business were you engaged in, at the time of your arrest? A Not in a business at all.

Q You know where the Ariston Bath is situated? A I do, sir.

Q How long have you been going to that bath? A I went to that bath in 97, 1897.

Q Between 1897 and up to the time of your arrest, did you continually remain in New York City? A I did not, sir.

Q Your business carried you out of the city? A It did, sir.

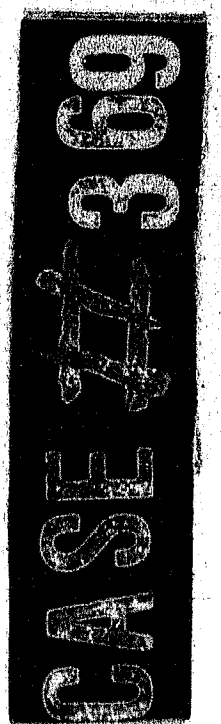
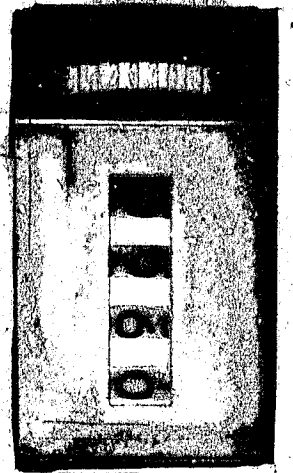
Q Now, you remember February 21st and February 22nd?
A I do, sir.

Q 1903? A Yes, sir.

Q The time of your arrest? A Yes, sir.

Q What time did you arrive at the Ariston Baths?

A I arrived at the Ariston Bath between 11;15 and 11.30.



Q Where were you, prior to that time? A I was at my home, 327 West 28th Street, until about 25 minutes of eleven. I walked up 8th avenue as far as 58th street. I went into Reisenwerber's, and had a glass of beer; and I returned to 55th street, and crossed over to Broadway, and went to the bath.

Q Were you at any time in the northwesterly room of those baths? A I was in the northwesterly room, but not in the room that these men have described here on the stand.

Q You have heard the testimony of Officer Phelan and Officer Fitzsimmons? A I did, sir.

Q Did you at any time commit, or did Mr. Galbert, George Galbert, place his penis into your anus? A No, sir.

Q Did any such thing ever take place? A No, sir.

Q Did George Galbert at any time take his penis and place it in your mouth? A No, sir.

Q When, for the first time, did you ever see George Galbert? A In the 47th street police station. That was about three or four o'clock of Sunday morning, or you might call it Saturday night.

Q Now, Mr. Bennett, Officer Phelan has testified that, at or about eleven o'clock of February 21st, he met you in the corridor, and that you had a conversation with him; or, in other words, that you invited him into your room, to have a good time. Did any such conversation take place? A That is

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absolutely false, because I was not in the place at eleven o'clock. Furthermore, I had no room.

Q Did you at any time, at or about eleven o'clock, or at any time at all, place your arm around Phelan's waist?

A No, sir. Impossible. I was not there.

Q Do you remember when the raid took place, Mr. Bennett?

A I do, sir.

Q At about what time? A Well I couldn't tell you the time exactly because--

Q Where were you at the time of the raid? A I was sitting on the table, in the first westerly room, the room that you had to pass through to go into the room that these men have described.

Q Who was the first person that spoke to you at the time?

A Fitzsimmons.

Q Where was he? A I was sitting on the table, in the first room, after you leave the corridor.

Q How soon before the raid? A I want that question over, please.

Q Can you tell about what time that was that you had that conversation with him? before the raid took place?

MR. ELY: I object. There is no conversation in the testimony there.

BY MR. GREENTHAL:

Q Go right ahead.

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MR. ELY: Objected to. There is no testimony about his having had any conversation there.

BY MR. GREENTHAL:

Q Did you have a conversation with Officer Phelan?

A No, sir.

Q You say you were standing there, and Officer Fitzsimmons was sitting on this table? A No, sir. The first time I saw him, I was in the hot room, when I had undressed and gone into the hot room, at 11.30.

Q Did you speak to him at that time? A He spoke to me.

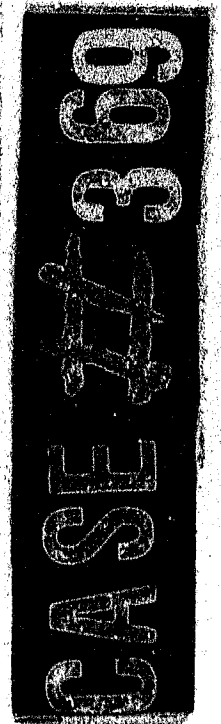
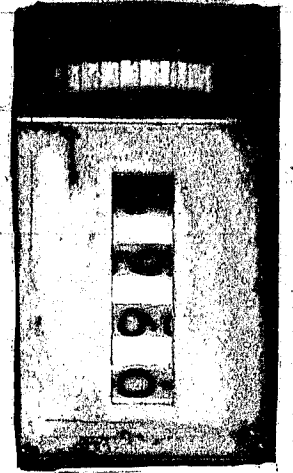
Q What did he say? A I went into the hot room, and was walking up and down, and he said, "It's hot in here, ain't it", and I said, "Very", and he pulled a steamer chair over, and he said, "Sit down", and I said, "I don't care to sit down".

And I kept walking up and down there, and then went into the vapor room, and then came out, to get a rubber, but they were all busy.

And finally Phelan left, and the rubber rubbed me down, and I went into the plunge room, and went back and forth into the plunge room, and I sat down alongside of the plunge.

And that diagram is not right. There is a place for two chairs there. It is a sort of platform, or tiled flooring, and I sat there, part of the time reading, and going back and forth into the plunge.

And I remained in there about forty minutes, and then



what into the place where the library is, or where the manicure is that fixes your fingers and toes.

And, after I sat there about fifteen minutes, I went into this first westerly room to lie down, but the couches were occupied, and I sat on the table, right under the mirror, and I read the Evening Telegram, and part of a magazine.

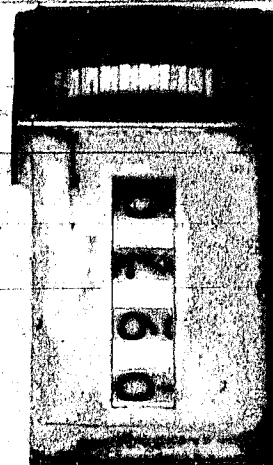
I sat there until I saw those two officers go into the northwest room. They were dressed when they went in there. And the raid was about five minutes after they went into the room. I was not in the room.

They came out, and Fitzsimmons was the one that spoke to me, and he said, "Get into that room, God damn you," and I said, "What for?" and he said, "Get in there. You are under arrest", and I said, "What for?" and he said, "Get in there, and you will find out."

And Fitzsimmons was the man that came in and picked me out, and he said, "We want him," and it was corroborated by Phelan.

And I went into the room west of the office, and stayed in there for some time, and then I left the room, and was taken out by Fitzsimmons, and not McCutcheon, and was taken into the first west room, to dress.

I dressed in the closet, right next to the mirror. There were several people had their clothes in there. And Fitzsimmons was the man that took me, not McCutcheon.



Q Now, Mr. Bennett, did you go around the corridor, parade around the corridor, shaking your limbs, exposing them?

A I did not sir.

Q Or trailing your sheet ? A I did not, sir.

Q Or making motions with your body? A I did not, sir.

CROSS EXAMINATION BY MR. ELY:

Q Had you been going to the Ariston Baths for any length of time before the 21st of February, 1903? A 1897.

Q And you had been a frequent visitor there? A Not a frequent visitor. Whenever I wanted a bath, and was in town.

Q Well how often, on the average, had you been there, for, say, a year prior to the 21st of February? A I never kept account. I am not here the entire year around.

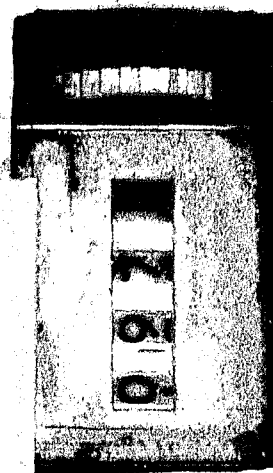
Q Well had you been there on an average two or three times a month ? A No, sir.

Q Well, twice a month ? A I couldn't tell you that. I went when I wanted a bath.

Q Once a month ? A I might have gone twice a month, or not at all the next month. I might have gone three times a month and might not have gone for five or six months.

Q But you had been going there since 1897? A Yes, sir.

Q To those Ariston Baths, pretty regularly, haven't you, when you have been in town? A What do you mean by regularly?



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Q Frequently? A How frequently? How often would you call frequently?

Q Well can't you answer it? A Well, when you tell me what you mean by frequently. There are variations in that.

MR. ELY: If your Honor please, I think the witness can answer the question. I ask to have him directed to do so.

MR. GREENTHAL: It is a perfectly proper answer, your Honor.

THE COURT: Put your question.

BY MR. ELY:

Q How many times had you been to the Ariston Baths in February, 1903, before the 21st? A Once.

Q Were you there on the 14th of February? A Yes, sir.

Q And how long before that? A Oh, some months previous to that.

Q Well how many months? A Well I can't just remember.

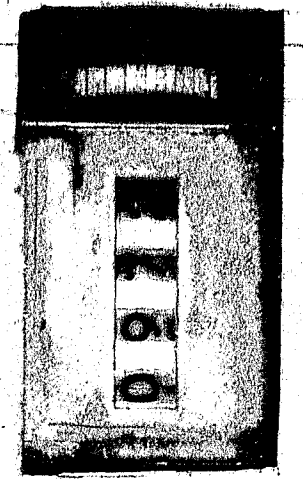
Q How many months? A Seven months.

Q How do you recollect that it was seven months? A I was away a good deal of the time.

Q Where were you? A Oh, I have been in the West.

Q For seven months prior to the 14th of February you were in the West? A I didn't say that.

Q Well, I am asking you? A I was in the West part of the time. I was in New York some time.



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Q Well how much of the time were you in New York?

A About two months and a half, back and forth. I don't remember the dates that I would come in and go away, or weeks.

Q Well during what months were you two months and a half in New York? A July, some part of July. I came from Glen Air, Pennsylvania. I was steward and waiter at the Glen Air Club.

Q And, between July and February 14th were you out of New York City? A Yes, sir.

Q Continuously? A Wait a minute. Between July and February 14th, you say?

Q Yes. A Oh, yes; positively.

Q Continuously? A No, sir; not continuously.

Q Well, between July and February 14th did you go to the Ariston Baths? A Between July and February 14th?

Q I didn't say July 14th. A Well give me your question again.

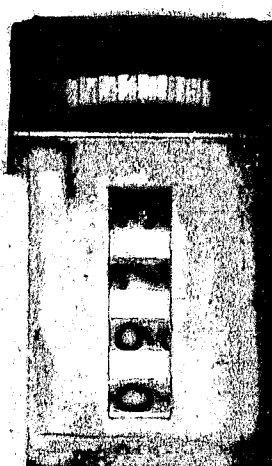
(It is repeated by the stenographer.)

A I might have been there once or twice, but I won't swear that I was or was not.

Q And, prior to July 1902, when had you been to the Ariston Baths? A Well I couldn't remember that. I didn't keep a date book or a remark book for those things.

Q Well about? A I couldn't tell you.

Q Well have you been in New York continuously from July



1902 to January 1903?

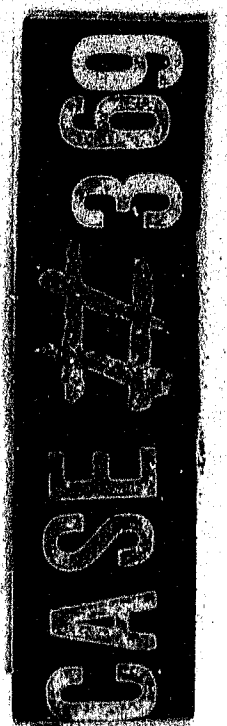
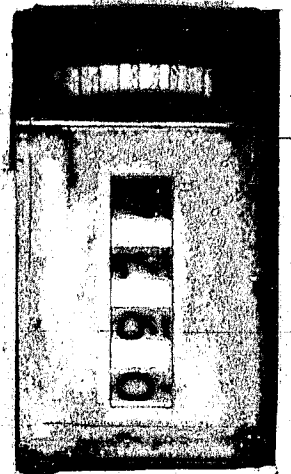
THE COURT: Gentlemen of the jury.

Remember my caution to you, yesterday evening,
and accept the same caution as being administered
to you now.

The court will take a recess until half past
two o'clock.

MR. ELY: Will your Honor direct the witness not
to speak to anybody, during the recess?

THE COURT: Yes. You will remember that you
are a witness under examination, and will not hold
any conversation with anybody, about the case, during
the recess.



AFTER RECESS.

W A L T E R A . B E N N E T T , the defendant, his cross examination being continued, testified as follows:

CROSS EXAMINATION CONTINUED:

BY MR. ELY:

Q (The last question is repeated.) A From July 1902 until January 1903, had I been continuously? Is that the question?

Q Yes. A No, sir.

Q Well, what time did you leave New York, after July 1902? A Well, I don 't just remember the time.

Q Well about when? A Oh, well, some time in-- I left on vacations and then I went away in October.

Q But I am talking of July. When, after July, did you leave New York, or during July? A Well, I went down to Manhattan Beach, and was at Asbury Park and Ocean Grove.

Q When? A During July and September, for days.

Q Just for a day? A Yes, sir. And I went away for a week, in September.

Q And then you were sleeping in New York, at nights, were you? A Not always, not always.

Q Generally speaking? A Generally speaking, yes.

Q And then, except for being away during the day time,



and perhaps a day or so at a time, you were in New York continuously from July until January? A No, sir.

Q Well when did you first begin to remain away? A Some time in October.

Q And then from July until October you were in New York continuously, except for a day or two, when you were out in the country? A For a week at a time. I generally went at nights to Manhattan Beach or Brighton. I stayed down on the boat generally. Or to Coney Island.

Q Well did you from the month of July to October go to the Ariston Baths? A No, sir.

Q And then when did you go away? In October? A Yes, sir.

Q When in October? A In October 1902.

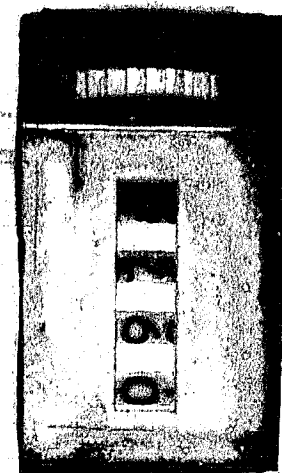
Q Where did you go? A Well I traveled in the West.

Q And when did you return? A The last day of January 1903.

Q Not until the last day of January 1903? A Not until the last day of January 1903; January 31st, 1903.

Q You are sure of that? A Yes, sir; January 31st, 1903. I am positive of it.

Q And where were you during the holiday season? That being the 25th of December 1902 till the 1st of January 1903? A Christmas day, I was in Brazil, Indiana.



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Q And at no time during the holidays, so called, that I have just described, from the 25th of December 1902, until the 1st of January 1903, were you in New York? A No, sir.

Q And, during the time of those holidays that I have just described, were you at the Ariston Baths? A No, sir.

Q Then, from October 1902 until the 14th of April 1903, you were not at the Ariston Baths? A No, sir.

Q Quite sure of that? A Positive.

THE COURT: Was he there on February 14th?

BY MR. ELY:

Q You were there on February 14th, 1903; were you?

A Yes, sir.

Q Did you see officer Fitzsimmons there, on February 14th, 1903? A Which is Fitzsimmons? Let me see his face.

Q Don't you know? A I can't remember him. If I see his face, I can tell you.

Q Well, you have been testifying about Phelan and Fitzsimmons, on the direct, without seeing their faces. Now can't you tell whether or not you saw Fitzsimmons on the 14th of February, 1903? A I have but two men in my mind, who appeared against me--

MR. ELY: If your Honor please, I ask for a direct answer.

THE COURT: Yes. Answer.

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A The question.

(The question is repeated by the stenographer.)

A Did I see him on the 14th ?

BY MR. ELY:

Q Yes. A No, sir.

Q Did you see any officer, who has testified here today--

A Who has testified? No, sir.

Q Well, I haven 't finished. I was going to ask you, if you had seen any officer, who testified here today, on the 14th of February, 1903, at the Ariston Baths? A No, sir.

Q You are sure of that? A I am positive.

Q Now, I ask you if it is the fact that the first time you saw Galbert was on the morning of the 22nd of February, 1903? A It is.

Q You never saw him in your life before until then?

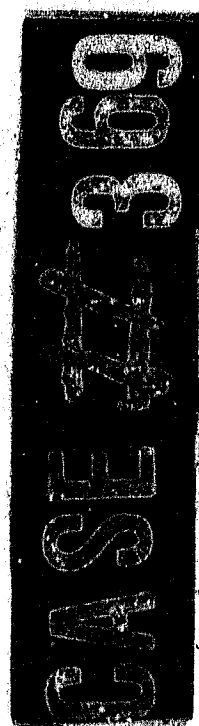
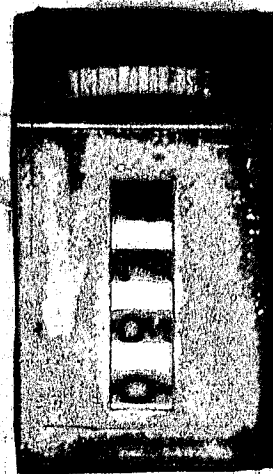
A No, sir.

Q You are sure of that? A Positive.

Q And you had been going to the Ariston Baths, from time to time, since 1897, up to 1903, February 21st? A Yes, sir.

Q And you never saw him before, until what time was it, on the 24th of February? A In the 47th street police station from 12-- when the raid was. I saw him in the station house, the large room, where the officers are.

Q In the 47th street police station? A Yes, sir.



Q And that is the first time that you ever seen him in your life? A Yes, sir.

Q Didn't you see him in the baths? A No, sir.

Q Before that? A No, sir.

Q On that night? A No, sir.

Q Hadn't you seen him in the baths at any time that you had been there, prior to the 21st of February, 1903?

A No, sir.

Q Didn't you see him in the baths about Christmas time?

A No, sir.

Q Is it not a fact that-- no, I will not ask you that.

Did you ever have any trouble with Phelan? A No, sir.

Q Did you ever have any trouble with Fitzsimmons?

A No, sir.

Q Did you ever have any trouble with McCutcheon?

A No, sir.

Q Did you ever have conversation with any of them?

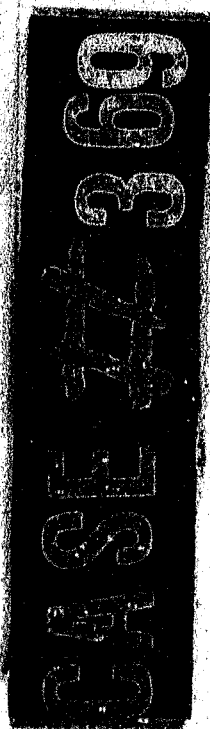
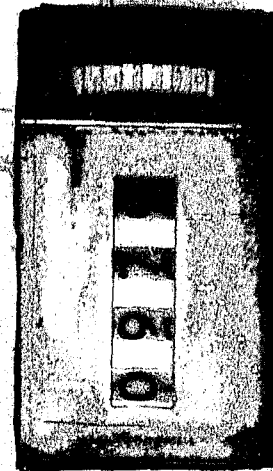
A The conversation that I told you I heard here, in the hot room, when I entered the bath, that night, at half past eleven.

Q At half past eleven? A Yes, sir.

Q How do you remember the time? A Because I said it was between a quarter after and half past when I got in.

Q Got in where? A Into the bath.

Q You mean into the bath establishment or the bath



itself? A The bath establishment.

Q How do you know it was between a quarter after and half an hour after when you got into the bath establishment?

A Because it was about five minutes after after eleven when I was in Reisenwerber's.

Q How do you know that? A Because I saw the clock there.

Q Did you look at the clock specially? A I did not. I didn't look at it specially. But I looked at the clock.

Q And it was five minutes after eleven? A Yes, sir.

Q Was the clock going? A I suppose so.

Q Then you don't know whether it was going or not?

A I didn't go up to it , to move the hands.

Q Then you went down to the baths ? A Yes, sir.

Q And who was it that you saw, as you say, in this hot room? A Phelan.

Q Was it not Fitzsimmons? A Phelan.

Q You are sure it was Phelan ? A I am positive.

Q You recollect now the difference between Fitzsimmons' and Phelan; do you? A Yes; since I started to think about it.

Q And Phelan was the one that you had the conversation with? A He was the one that spoke to me.

Q And what did he say? A He said, "It is hot in here;

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ain't it?" and I said, "Very", and he said, "Take a seat", and I said, "I don't care to sit down".

Q Who said this? A Phelan.

Q Is that the man, Phelan, that invited you to take a seat (indicating)? A That is the man. And he wore a moustache, that night.

MR. GREENTHAL: Well, I don't think it is fair to have these witnesses in the court room.

THE COURT: They have been examined.

MR. GREENTHAL: Well, I know, but they may be called in rebuttal.

THE COURT: Oh, well, go on, Mr. District Attorney.

MR. GREENTHAL: I take an exception, if your Honor please.

MR. ELY: I don't expect to call Mr. Phelan in rebuttal, sir.

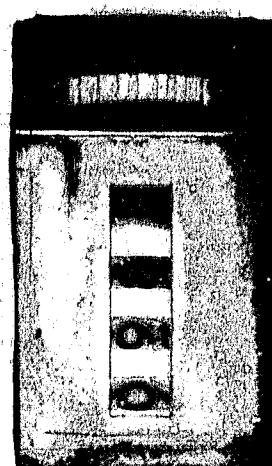
MR. GREENTHAL: Then that is all right.

MR. ELY: Though I may.

MR. GREENTHAL: Then I ask that the witnesses be excluded from the court room.

THE COURT: Go on, Mr. District Attorney. Do not waste any time.

BY MR. ELY:



Q Well, now after the request for you to take a seat had been made, as you say, what happened next? A Why, I didn't take it. I kept on walking up and down until I got ready to go into the vapor room.

Q Did you have any other conversation with Phelan?

A No, sir.

Q And did you ever have any conversation with Fitzsimmons? A No, sir.

Q You never had any conversation with any of the officers except with Phelan, just as you say, in this hot room?

A That's all.

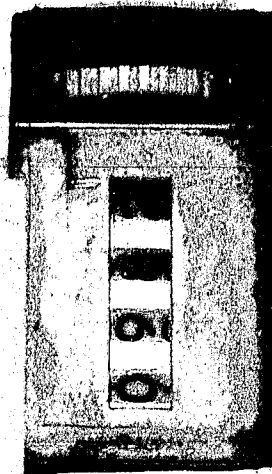
Q Now where were you when you were arrested? A I was sitting on the table, at the mantel piece, right opposite the closet where my clothes were in.

Q Well I don't know where the table and mantel piece and closet where your clothes were-- where were you? A In the first west room.

Q Well I am not asking you where you were not, but where you were. A In the first west room, as you enter, the first room that you have to go through.

Q Well what do you mean? As you enter what? A The Turkish bath establishment, or what? A After you leave the hall or corridor, at the extreme end--

Q Now wait a minute. As you go into the Turkish bath



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establishment, you go in from 55th street? A Yes, sir.

Q And then there is the office? A Yes, sir.

Q And then a buffet or bar? A Yes, sir.

Q And then back of the buffet the hall runs; and, on the left hand side, that is, on the westerly side, is a toilet; is it not? A Yes, sir.

Q And then you go on down to a passage, and you get into a dressing room, which is to the westerly side of this passage; is that right? A You get into a reclining room, off of which there are several dressing rooms.

Q A reclining room? Now is that the room that you say you were in? A That's the room I was in.

Q Well that is just east of this extreme northwesterly dressing room, is it not? A Yes, sir, it is east.

Q Well now on the diagram-- look at it-- that would represent the dressing room that you say you were in (indicating)? A Well, this is not a correct diagram for me to get in the room.

MR. ELY: Well, if your Honor please, I didn't ask him that at all.

MR. GREENTHAL: Well, that is an answer, if your Honor please.

THE WITNESS: Your Honor, may I address you, if you please?

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BY THE COURT:

Q Can you, from the digram handed you, point out the room that you had reference to ? A I think that is the room that they mean, but the diagram is not correct for me to show it (indicating).

Q No. I simply asked you the question can you show upon the diagram the room? A Well this would be it, as near as any room could be (indicating).

BY MR. ELY:

Q Well now this is it? A Yes, sir.

Q Well that is it (indicating)? A Yes, sir.

MR. ELY: Well, we will put a cross there with "B", to represent the room which the witness says he was in, at the time he was arrested. Mr. Foreman, look at it, and pass it around.

BY MR. ELY:

Q And that is right connecting with the extreme north westerly cooling and dressing room, is it not? A Yes, sir.

Q And that room that you were in-- what were you doing when you were arrested in there? A I was sitting on the table, reading.

Q And who arrested you? A Fitzsimmons.

Q Did you have any conversation with Fitzsimmons then?

A Well, he told me to go into the other room.

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Q Well, did you have any conversation with Fitzsimmons then? A Not any more than to say, "What for," to ask him.

Q Well did you have any conversation with Fitzsimmons then? A I wouldn't call it a conversation. It was a question.

Q Did you reply? A I did not. I only--

Q Didn't you say anything to him? A I said, "What for?"

Q Well then you did say something to him; didn't you?

A I asked the question.

Q Didn't you say something to him? Why don't you answer?

A I questioned him. I didn't put the affirmative. I put the question.

Q Oh, you make a difference? A I think, if you will look at the minutes, I said, in the beginning, "What for?"

Q I am not asking what you said, in the beginning. But I asked you what the facts are, and what your replies to my questions are to be. A Well, as a matter of fact, I asked him what for. To answer a thing is to take the affirmative.

Q Well did you ask him what for? A Yes, sir.

Q And what did he say? A "Get the Hell in there, and you will find out," and he said something about being arrested.

Q Well what did he say about being arrested? A I don't remember the words.

Q Well, who spoke first? A Fitzsimmons.

Q And then what did he say to you? A He told me to

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get the Hell in there, or to get out of the room.

Q The first thing he said to you was, "Get the Hell in that room," or "Get the Hell out of this room"? A No, sir. He said, "Get the Hell in there," and I said, "What for?" And then he said something about being arrested.

Q What did he say? A I don't remember the exact words.

Q Did you say anything else? A No, sir.

Q Just went? A Yes, sir.

Q And were you dressed or undressed? A I was undressed.

Q Was he dressed or undressed? A Dressed.

Q All dressed? A Dressed.

Q Now you are sure that it was not Phelan, are you?

A Both of them were dressed.

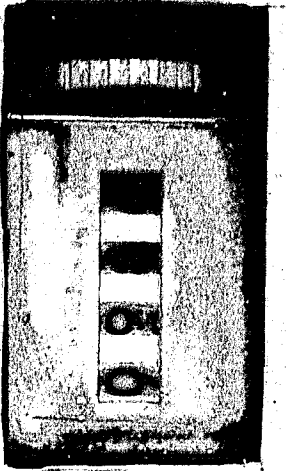
Q You are sure that it was not Phelan that you had this conversation with? A Positive.

Q And then did you have a conversation with another than Phelan on that night, another one of the officers than Phelan? A To the extent that you have heard me say here, that he told me to go in that room.

Q Now where did you go? A I went into the library.

Q Now where, with respect to the office, is what you call the library? A Hand me the paper and I will show you.

Q Oh, no you won't. You will just tell me. A Oh, where it is?



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Q Yes. A After you go into the office, from 55th street, you go into the wine room, and turn to the door to the right, which will lead you east. I don't think that there is on that diagram a door to get in there. If there is, I will tell you.

Q Now there is the buffet. And the door to lead into the east. There is the diagram (indicating)? A It don't lead into the library. It leads into the buffet, but not the library. I don't know how I would get in there. I would have to go around through some of the other rooms.

Q Why was it not the room to the west that you went into, the one leading out from the buffet, to the west?

A I went in, during the evening, after they took me out of the library, but, when I left the room where I was sitting, I went into the room where they were all in there.

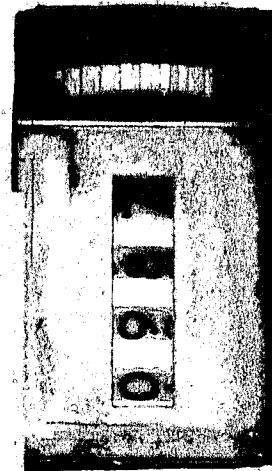
Q Well, then, you say-- where is there an entrance to the room that you call the library? A Do you want me to mark the door way, the passage way there?

Q Just indicate.

A It would be about there (indicating).

Q Well, now, indicate the other side of the door way?

A How do you mean, the other side of the door way?



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Q Well that is not the whole width of the door way.

A I asked you if I should mark it, and you said just indicate it.

Q And then I told you to mark it. And you were brought into this library, as you call it? And how long did you remain there?

A Until Fitzsimmons came and called me out, or picked me out, rather.

Q Did you see Phelan then in there, at that time?

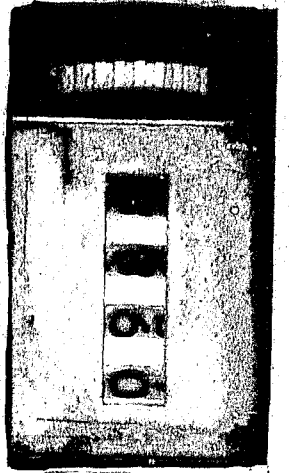
A I did.

Q And then you were taken out, and taken to a dressing room?

A No, sir. I was taken to a room west of that inner room.

Q And then where did you go?

A I remained in there until Fitzsimmons took me to dress.



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A I remained in there until Fitzsimmons took me to dress.

MR. ELY: I ask to have that stricken out. I asked him, your Honor, where he went, and I didn't ask him about anybody.

THE COURT: Just answer the question.

A I went into the dressing rooms where the clothes were.

BY MR. ELY:

Q And where were your clothes? A In the closet off the mantle piece, at the extreme end of the large reclining room.

Q Well, which room was that? A The room where I was arrested.

Q Where you say you were sitting on the table and had the conversation with Fitzsimmons? A Yes, sir.

Q And your clothes were in a closet there? A Yes, sir.

Q And in what part of that room? A The extreme end, up by the table.

Q Well, I don't know which extreme end you are talking about. Which extreme end are you talking about? A The eastern end of the room.

Q And you were taken-- is that about the place where you were taken then (indicating)? Here is the room where

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you were arrested? (Indicating). A Well, that diagram is so bad, I can't lay it out. It would be over in this end where the closet would be, but these toilets would not be in that room (indicating).

Q Well, it isn't in the room? A Well, there it is (indicating).

Q Well, there is the line that divides them. You were taken there and allowed to dress; were you? A I was.

Q And didn't you ever see McCutcheon? A No, sir.

Q You have heard McCutcheon testify that he took you to that room? A I did. I heard him.

Q But you are sure that it was Fitzsimmons? A I am.

Q You don't know any reason why McCutcheon should say that he took you, do you?

MR. GREENTHAL: Objected to, if your Honor please.

THE COURT: I will sustain the objection.

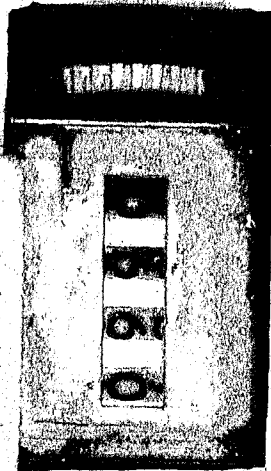
RE DIRECT EXAMINATION BY MR. GREENTHAL:

Q Now, Mr. pennett, look at this paper. What does that paper represent, Mr. Bennett?

MR. ELY: I object.

BY MR. GREENTHAL:

Q Did you ever see that paper before? A Yes, sir.



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Q What is that? A This is a diagram of the baths.

MR. ELY: I object to his characterization of the paper.

THE COURT: Lay a foundation for it, counselor.

BY MR. GREENTHAL:

Q Can you tell us what that represents?

MR. ELY: I object.

THE COURT: No. That will not do.

BY MR. GREENTHAL:

Q Who drew that diagram? A I did.

Q When? A During my confinement in the Tombs.

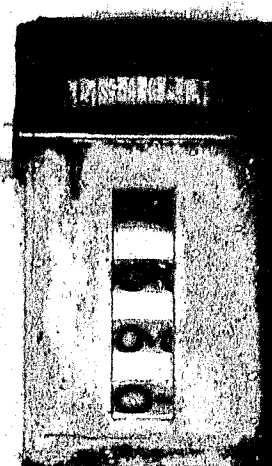
Q Well, what does that represent? A It represents the Ariston Baths.

MR. GREENTHAL: I offer that in evidence, if your Honor please.

BY MR. GREENTHAL:

Q Is that a correct diagram of that place? A It is the correct diagram of the place, of what has been open, previous to a year or two ago. But, at the back of this swimming pool was another hot room, which was then closed off, sometime within the last two years or year.

Q Let me look at it? A Oh, I know it was closed off, the night I was there, because I couldn't get into it.



MR. ELY: I do not object to that paper, sir.
It is about the same as the People's Exhibit. I
would like the jury to take both of them together.

THE COURT: I will admit it.

(The paper is marked Defendant's Exhibit 1).

BY MR. ELY:

Q That is the room, is it not (indicating)? A Yes,
sir.

Q That is the extreme northwesterly room, is it not?
You have got portieres there? A Yes, sir; there is the mark
for the portieres.

Q Well, then, mark that for a room. The jury want to
know whether that is a room or not. Mark it the northwest room?

A Shall I put the couches in?

Q I don't care whether you do or not? A There are
two couches in there, not three.

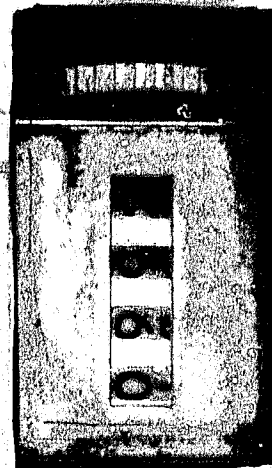
Q How do you know there are only two couches there and
not three?

MR. GREENTHAL: One moment. I am not through
with the witness. wait until I get through. Then you
may ask.

MR. ELY: very well, I thought you were through.

BY MR. GREENTHAL:

Q Now, Mr. Bennett, look at defendant's Exhibit 1. Can



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you say, by looking at that paper, where you sat at the time of your arrest? A Yes, sir.

Q Will you mark it? A It is marked.

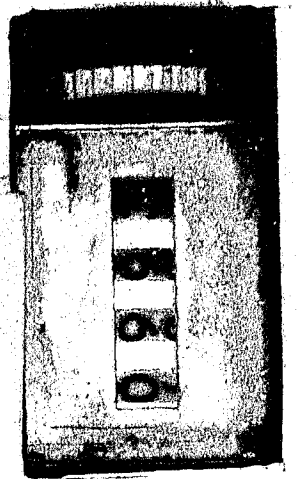
Q How is it marked? A With a cross.

Q Now, do you know where the northwesterly room is, that has been spoken of? A Yes, sir.

Q Is there any room between that room and the room you sat in? A No, sir. The room I sat in and the room adjoining it, the northwesterly room, there are two couches. One is where I sat and the other is where I dressed.

BY THE COURT:

Q Is Bennett your true name? A Yes, sir; that is the name I was born under.



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J E N N I E D U N N, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q Miss Dunn, where do you live? A 307 West 28th street.

Q How long have you lived there? A Three years.

Q What kind of a place do you keep there, Miss Dunn?

A Furnished rooms.

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

Q How long do you know him? A I know him three years.

Q Now do you remember the 21st day of February, of this year? A Yes, sir.

Q Did you see Bennett on that day? A Yes, sir.

Q How long had he lived with you at that time?

MR. ELY: I object. There is no testimony here that he has lived with her.

THE COURT: It is immaterial.

BY MR. GREENTHAL:

Q All right. Did Mr. Bennett live with you during that week? A Yes, sir.

MR. ELY: I object to that, as immaterial, and move to strike out the answer.

MR. GREENTHAL: It is consented to.

THE COURT: Strike it out.

BY MR. GREENTHAL:

Q Did you see the defendant on the 21st of February?

A Yes, sir.

Q At what hour? A Around six o'clock in the evening, first.

Q And how long did he remain in your rooms, if you know?

THE COURT: How does that become material?

MR. GREENTHAL: very material, if your Honor please. I am going to show by this witness, what time this defendant left that house. They swear that he was there at nine o'clock, and I will show when he left that house.

BY MR. GREENTHAL:

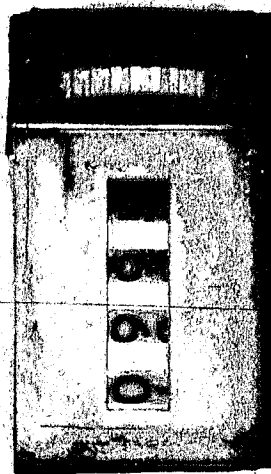
Q Do you know what time he left your home? A Yes, sir.

MR. ELY: Oh, I object. It is immaterial.

It makes no difference.

THE COURT: Well, the defendant himself testifies that he was in the baths that night.

MR. GREENTHAL: Yes, sir, that is all right, but the detective swears that he saw him there at half past nine, and I will show by the witness that he did not leave her house until half past ten o'clock or a quarter to eleven. In other words, I am impeach-



ing the credibility of the detectives. I think it is very material.

THE COURT: very well, then. Go on and answer the question.

BY MR. GREENTHAL:

Q What time did he leave your home? A Saturday night, 25 minutes of 11.

Q Do you know other people who know Mr. Bennett?

A Yes, sir.

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

MR. ELY: Objected to.

THE COURT: Allowed.

A Yes, sir. All that I know about him is good.

Q Just answer yes or no. Do you know? A Yes, sir.

Q Is it good or bad? A Good.

CROSS EXAMINATION BY MR. ELY:

Q Now, what is it that impresses it upon your mind that Bennett left your place at 307 West 28th street, at exactly 25 minutes of 11 on the night of the 21st of February, 1903?

A Well, because I looked at the clock just as he went out. He stayed rather late and I wanted to put out the gas upstairs and I thought it was time to put it out, and I just had reason

to look at the clock. And I wanted to go to the store at the same time, and I thought it would be closed and I looked at the clock to see if I would have time enough. The stores don't close until 12 o'clock, Saturday nights, the stores I wanted to go to.

Q Anything else that impressed it upon your mind?

A Nothing else, except I know that he was a respectable man.

Q That he was a respectable man impressed it upon you what time he left your house that night? A Yes, sir. I had some friends that wanted to go home, too, some lady friends; and my sister was there, and she wanted to go home.

Q And that impressed it upon your mind? A Yes, sir. And I had reason to look at the clock.

Q And then it was not because you wanted to go to the store? A Well, both.

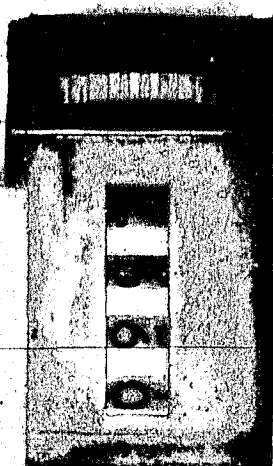
Q And your sister comes to see you frequently, doesn't she? A Yes, sir.

Q Often on Saturday nights? A Well, not generally on Saturday nights; not any night, in particular.

Q Well, it was not anything remarkable that your sister should happen to be at your place on Saturday night; was it?

A Oh, no, sir.

Q And that, of itself, would not impress it upon your



mind? A No, sir.

Q But because you wanted to go to the grocery store?

A The butcher's.

Q And this man was there? A Yes, sir.

Q That impressed it on your mind that it was the 21st of February? A Yes, sir.

Q And that is all? A That is all.

Q And how long have you known this defendant? A Three years.

Q Three years? A Yes, sir.

Q And have you known him well? A Well, I know him as well as--- he lived in my house all that time, most, except when he went away. He used to go away.

Q And then he was a boarder in your house? A Yes, sir. He had a room there.

Q Well, he lodged there, did he? A Yes, sir.

Q And he had been living there off and on for three years? A Yes, sir; always when he was in the City he lived there; he had just come back a week before he was locked up.

Q And he had been in your rooms at other times during the three years that he had lived there; hadn't he? Other times than on this 21st of February? A In the room?

Q He had been in your rooms, hadn't he? A Having a room there?

Q (Question repeated). A Oh, you mean where I was, in the kitchen?

Q Well, in the kitchen? A Yes, sir.

Q He used to come into the kitchen frequently? A Yes, sir.

Q And he had been in the kitchen there Saturday nights, hadn't he? A Yee, sir.

Q And you usually do your marketing, all grocery purchasing on Saturday nights? A Yes, sir; for Sunday.

Q Did you ever hear anybody discuss his reputation talk about his reputation for decency? A I always heard---

Q (Question repeated). Before the 21st day of February, 1903? A Yes, sir; I always heard people talk about him.

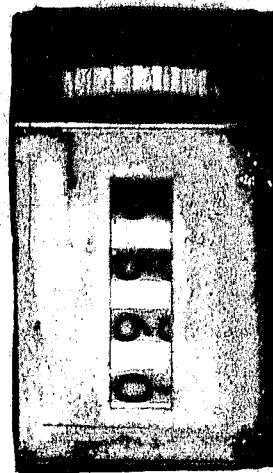
Q For decency? A Yes, sir; for being a decent, respectable man.

Q Well, was there any question about it? How did it come up? A Well, just as if you were talking to somebody that knew him.

Q And they all said he was decent? A Yes, sir; where he had rooms before.

Q Well, who spoke to you about him? A Well, ladies in the street, where he had rooms.

MR. ELY: That is all.



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MR. GREENTHAL: That is all. Oh, I have another question.

BY MR. GREENTHAL:

Q Miss Dunn--

THE COURT: No. You have concluded your examination.

MR. GREENTHAL: I except to your Honor not permitting me to ask a further question.

THE COURT: You had concluded your examination.

DELIA EGAN, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q Where do you live, Madam? A 345 West 32nd street.

Q Do you know Miss Dunn? A Yes, sir.

Q Do you know where Miss Dunn lived on the 21st of February of this year? A Yes, sir.

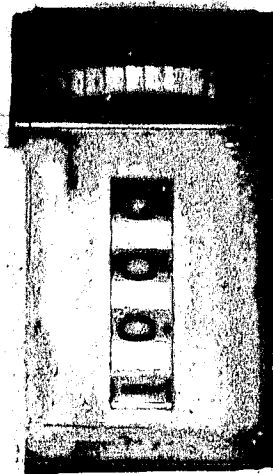
Q Where? A At 345 West 32nd.

Q Did you understand my question? A No, I did not.

Q Did you see Mr. Bennett on the 21st of February, 1903? A Yes, sir.

Q Where did you see him? A At 28th street.

Q Where? A At Miss Dunn's house.



Q What time did you see him? A I saw him there at 25 minutes to 11.

Q And how do you fix the time, Miss Dunn?

MR. GREENTHAL: You need not smile at the jury, Mr. Ely. Try to be a gentleman.

MR. ELY: If your Honor please, these remarks are improper.

THE COURT: proceed.

A I went to see my friend, Miss Dunn, and, while I was there Mr. pennett came in, about six or seven. He had been out getting a plumber for Miss Dunn, and it was about nine o'clock before the work was done, and then he had dinner there, and he didn't leave until 25 minutes to 11.

BY MR. GREENTHAL:

Q About what time did you leave there? A I stayed there about ten minutes after him. I stood up to go and found it was 25 minutes to 11, and I stayed there a few minutes after him.

Q And did you leave there with anybody? A Yes, sir, with my friend.

Q Who is your friend? A Miss Dunn's sister.

CROSS EXAMINATION BY MR. ELY:

Q Had you ever seen Bennett, before in your life, be-

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fore the 21st of February? A Oh, yes, I knew him for three years.

Q And you have seen him on several occasions, haven't you? A I have.

Q And you have seen him on other Saturday nights than the 21st of February? A Well, I have, once in a while, as I would happen to meet him.

Q And how do you happen to recollect the 21st of February so well? A Well, I recollect it perfectly well, because I recollect it from the arrest. Of course, when I heard of the arrest, when I heard it was made, I recollected it from that, evidently.

Q And how did you happen to look at the clock at 25 minutes to eleven? A I wanted to go home. It was time for me to go home. I live in West 32nd street.

Q And that is the only way you happened to look at the clock, that you wanted to go home? A Well, I wanted to go home, and the lady of the house was going out to market and it was time that she should go on Saturday night.

K A T I E D U N N, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q Do you remember where you were on the 21st day of

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February, 1903? A Yes, sir.

Q Where were you? A I was at my sister's house.

Q Where did she live, at that time? A 307 West 28th.

Q What time did you get there? A Well, I guess I got there about half past nine.

Q Who did you see there, when you arrived? A I saw my two sisters and Walter Bennett and Delia Egan.

Q Now, do you know about what time Mr. Bennett left the house? A Mr. Bennett left the house about 25 minutes past ten.

Q About that? A Yes, sir. I got up to look at the clock, to go home, right after he went out of the door.

Q Do you know what time Miss Egan left the house? A I don't know; because she went out to the market with my sister, and I went home.

CROSS EXAMINATION BY MR. ELY:

Q Why, didn't you go home with Egan? A I didn't live with Egan.

Q Well, didn't you go home with Egan? A No. I live at 32 West 38th street.

Q And you went home alone? A Yes, sir.

Q And Miss Egan didn't go home with you at all? A No,

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she didn't.

MR. ELY: That is all.

MR. GREENTHAL: One minute.

THE COURT: No. Call your next witness.

CATHERINE BOLTON, a witness called on behalf
of the defense, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q Mrs. Bolton, where do you live? A 203 West 41st
street.

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

Q How long have you known him? A 11 years.

Q Do you know other people who know Bennett? A Sever-
al.

Q Do you know what his reputation for decency and
respectability is? A Always good.

Cross examination none.

FRANCES S. BRIDGE, a witness called on behalf
of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q Where do you live, Mrs. Bridge? A At 1 West 72nd

Q Do you know Mr. pennett, the defendant at the bar?

A I have known him since he was a little fellow, fourteen or fifteen years old.

Q How many years do you know him? A It was in 1883. He was bell boy in the hotel where I was.

Q Do you know other people who know Mr. pennett? A Yes, sir; several.

Q Do you know his reputation for decency and respectability? A As far as I know, it is perfectly good. I have recommended him to places, and they have thanked me for recommending him.

CROSS EXAMINATION BY MR. ELY:

Q Well, you only knew him as a servant or bell boy?

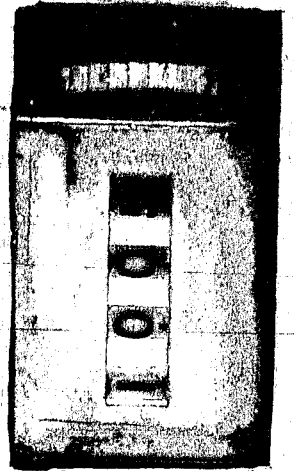
A No, sir; more than that, because I have known him since he was a little fellow:

Q Well, how have you known him? A Well, I have known him in rather a peculiar way.

Q Well, tell us. Don't characterize? A Well, I have known him-- it has been partly in that way, and partly in a friendly way; not in a social way.

Q Well, you haven't been around at all with the defendant? A How do you mean around with him.

Q Going out with him? A I have been to the theater with him, twice.



Q Going out with him at night frequently? A No, I don't go out at night very frequently.

Q And, except as a bell boy and as having recommended him and having been out to the theatre with him twice, do you know anything about him? A Yes, sir. He has come to me frequently. I have seen him a number of times. And he was a protege of my mother's, to begin with.

W A L T E R E. B E N T L E Y, a witness called on behalf of the defense, being duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. GREENTHAL:

Q With what church are you connected? A The Church of the Resurrection.

Q How long have you known Mr. Bennett? A Nearly four years.

Q You know other men and women who know Mr. Bennett?
A Do I know others who know him?

Q Yes. A Quite a number; friends of mine.

Q Do you know what his reputation for decency and respectability is? A Always excellent.

Q It is good? A Yes, sir.

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CROSS EXAMINATION BY MR. ELY:

Q Have you ever heard his reputation discussed? A Yes, sir, I have heard talks, but not in any way reflecting upon his character.

Q No. I ask you if you have ever heard his reputation discussed? A No; I have not.

G E O R G E G A L B E R T, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q What is your name? A George Caldwell.

BY THE COURT:

Q What is that? What is your name? A George Caldwell.

BY MR. GREENTHAL:

Q And, at the time of your arrest, you gave the name of George Galbert? A Yes, sir.

Q And where do you live, sir? A 105 East 82nd street.

Q And where are you employed? A Carrere & Hastings, 28 East 41st street.

Q And what is their business? A Architects.

Q And how long have you been employed by that firm?

A Three years and four or five months.

Q And what is your occupation with that firm? A Draughts man; and I write specifications.

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Q Now, do you remember the 21st day of February, 1903?

A I do.

Q Do you remember being at the Ariston Baths on that evening? A I do.

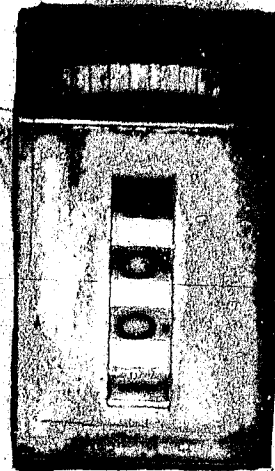
Q Do you know what time you got there? A Sometime between half past nine and ten.

Q Now, go right ahead, and tell, in your own way what happened on that evening? A Well, when I got to the bath, I asked for a room, and was assigned to Room 20. I went in, took off my clothes. After the-- after I had undressed and been given a sheet to wrap around me, I started out of my room, in the wrong direction, away from the room where the baths are.

I turned back and went out in the other direction into the baths and took my bath and was scrubbed.

I went back to my room to lay down for a while, I suppose, for fully three quarters of an hour or half an hour, and it was pretty hot there, without any ventilation, and I got to the room, again in the opposite direction to the room which was curtained off, and opened the-- pulled back the portieres, and started in to see--- and saw that the couches that were there were all occupied; turned around and went into the other part of the building.

And, on my way there, through the building, I met a man, who I afterwards understand is Officer Phelan. He



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was trying to weigh himself, standing on a pair of scales, and the bar of the scale, the bar of the scale threw a reflection on the weight, and he couldn't see it, and I asked him if he had any trouble in seeing it, and I weighed him.

And I then went into the other portion of the building, still looking for a couch that was cooler and found that they were all occupied, and went back to my room, and went to sleep, and was asleep in there when I was awakened by a violent pulling and slamming at the door.

And I asked what was the matter, and I was answered in all kinds of language, "You come out of here and you will see what is the matter".

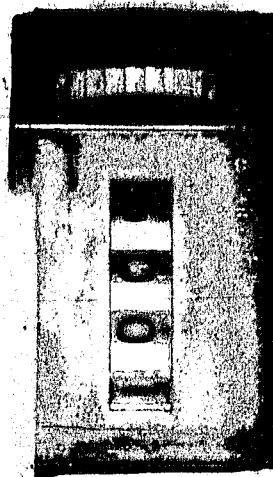
And I was naturally a little angry, and I said "Who are you talking to " with some profanity in it. And they said, "Come out and you will see," and I turned the key and went out.

Q And who did you see? A I don't know the man's name. He is an officer at the 57th street station. I saw him in Court there. No, at the 34th street station. I saw him in Court there.

Q You recognize the officer in Court now? A No, sir.

Q Do you recognize him in the Court room now? Look around? A He was a tall man with broad shoulders and a gray mustache, black and gray mustache.

Q Did you at any time enter that northwesterly room,



to lie on the couch? A No, sir.

Q Did you at any time insert your penis into the anus of Mr. Bennett? A No, sir.

Q Did you at any time take his penis and put it in your mouth? A No, sir.

Q When, for the first time, did you see Bennett? A The first time I remember of seeing Bennett is Sunday, the Sunday after we were taken from the 47th street station up to the 53rd street station.

Q Had you ever been at that bath prior to that time?
A No, sir.

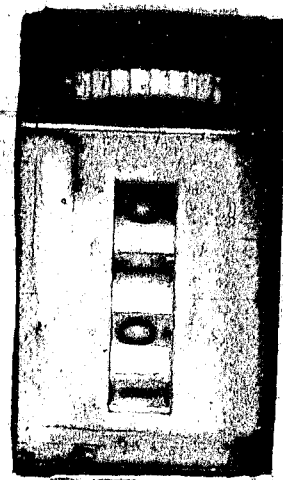
Q When you came out of your room, your dressing room, did you have a fight, or was there a quarrel there, with the officer?

MR. ELY: I object to his leading the witness in this way, sir.

BY MR. GREENTHAL:

Q Well, what was said or done when you came out? A Well, this man that was standing across the row of benches that is down the middle of the room said, "Oh, here comes the indignant lady", and I started to go across the couch and somebody behind me-- I don't know who-- said "Don't make a racket".

THE COURT: No. Do not state what was said, if you do not know who said it.

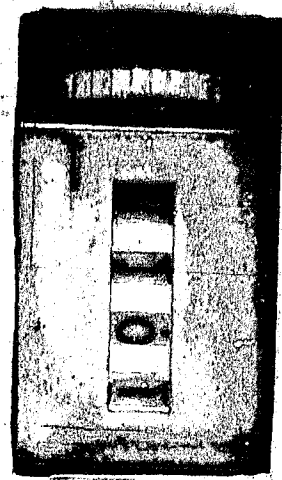


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THE WITNESS: Well, he simply said that the place had been raided.

THE COURT: No. Do not state what any person said when you do not know who the person was or rather what person it was.



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CROSS EXAMINATION BY MR. ELY:

Q Where did you say you resided? A 105 East 82nd street.

Q And when, if ever, did you reside at 187 West 84th street? A I never resided there.

Q That is the address you gave, when you were arrested, in the police court, was it? A Yes, sir.

Q You gave the name of George Galbert? A Yes, sir.

Q And your name is what? A George Caldwell.

Q Now you are indicted for sodomy yourself, in connection with these actresses that are alleged to have gone on, on the 21st of February, at the Ariston Baths? A I am.

Q Now did you-- how often have you been to the Ariston Baths, or had you been, prior to the 21st of February?
A I had never been there before.

Q Is it not a fact that you had been there quite regularly, for a year before the 21st? A No, sir.

Q You are sure of that? A Perfectly positive of that.

Q You are perfectly sure that you never saw this defendant at the Ariston Baths in your life? A Perfectly positive of it.

Q You noticed who are there, when you are taking a bath; don't you? You notice other people about, don't you? You can see who they are? A (No answer.)

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Q When you are at a bath? A Why no; I have never been there before.

Q But you saw some people, there when you were there, on the 21st; didn't you? A Why certainly.

Q And you saw Officer Phelan there, for example?

A Yes, sir.

Q And did you see Fitzsimmons there? A No.

Q And you saw this other officer, who, you say, came to your room? A Yes, sir.

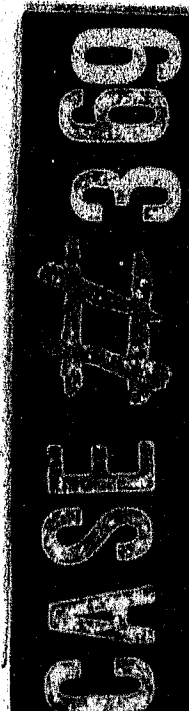
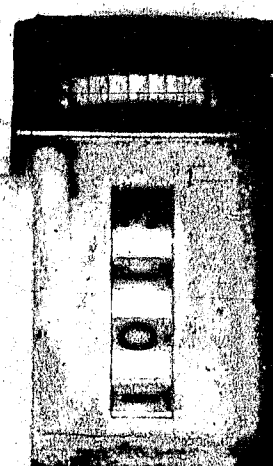
Q And then you did observe the people who were in the baths at the time that you were there? A Yes, sir; I recognized a great--

Q And then, when you go to a Turkish bath, you do observe who is there? A Certainly.

Q Now how did you happen to go to the Ariston Baths on the 21st of February, 1903? A I had been to the exhibition of the Architectural League, at the Fine Arts Building, in 57th street, and Broadway. I went around the building for about an hour, looking at the exhibits, and started down Broadway.

Q And you got in there, at half past nine, and you didn't leave until you were under arrest? A Between half past nine and ten.

Q Well, between half past nine and ten? A Yes, sir.



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Q Now you are sure that you were never there before?

A Perfectly positive, sir.

MR. GREENTHAL: The defendant rests.



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REBUTTAL.

GEORGE CONNOLLY, a witness called on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A A bath attendant.

Q Turkish bath attendant? A Yes, sir.

Q And, prior to the 21st day of February, 1903, where were you employed? A AIn the Ariston Baths.

Q And the Ariston Baths are at 1730 Broadway, the north-east corner of 55th street and Broadway, are they? A Yes, sir.

Q And, prior to the 21st day of February, 1903, how long had you been employed there, at the Ariston Baths?

A About three years.

Q And the Ariston Baths are in the County of New York?

A Yes, sir.

Q And do you know the defendant here? A Yes, sir.

Q And for how long a time have you known the defendant?

A For over a year.

Q And in what way have you known him? A Well I would see him coming in and out there, about once or twice a week.

Q Coming in and out of there, once or twice a week?

A Yes, sir.

Q Now where is there? A In the baths.

Q In the Ariston Baths? A Yes, sir.

Q Now did you see the defendant on Christmas or New Years time?

MR. GREENTHAL: I object to that, if your Honor please, as leading. I don't think it is fair to call his attention to any particular time.

THE COURT: Yes. I sustain the objection.

BY MR. ELY:

Q Did you see the defendant-- when, prior to February 21st, if you can recall, did you see the defendant? A Around the holiday time.

Q Well what do you mean by the holiday time? A About Christmas time there.

Q Where did you see the defendant, about Christmas time? A In the Ariston Bath.

Q Did you see the defendant on the 21st day of February, 1903? A It was the day after, yes.

Q And where did you see the defendant? At what time did you see the defendant first, if you can recollect, on the 21st day of February, 1903; about what time in the evening? A Well, to the best of my opinion, about half past ten or eleven o'clock.

Q About half past ten or eleven o'clock? A Yes, sir.

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MR. FLY: Galbert! Call him Galbert.

BY MR. FLY:

Q Did you ever see that man (indicating Galbert)?

A Yes, sir.

Q When did you see him? A I seen him around about the holiday time, too.

Q And had you known this man, George Galbert, who just stood here before the bar, before the Christmas holidays?

A Yes, sir.

Q And where had you seen him? A I seen him in the Ariston Baths.

Q And for how long a period have you seen this person, George Galbert, who just came to the bar here, at the Ariston Baths? A Well, off and on, to my remembrance, for over a year.

Q For over a year? A Yes, sir.

CROSS EXAMINATION BY MR. GREENTHAL:

Q Mr. Connolly, where do you live? A 437 West 51st street.

Q 54th street? A West 51st street.

Q How long do you say you have been connected with the Ariston Baths? A Three years.

Q You swear positively that you saw the defendant, Bennett, in those baths, on or about Christmas time? A Yes, sir

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Q No mistake about that? A No mistake about it.

Q Do you know what time he came there? A I couldn't tell you the time he came there.

Q What time did you see him there ?

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

I don't understand the question. When? He must make it definite.

THE COURT: Yes; make your question definite, Mr. Greenthal.

BY MR. GREENTHAL:

Q Now at what hour did he arrive ?

MR. ELY: I object.

THE COURT: The witness says that he saw him about the holidays. Now ask him what day or night he saw him about the holidays.

BY MR. GREENTHAL:

Q Well, what day?

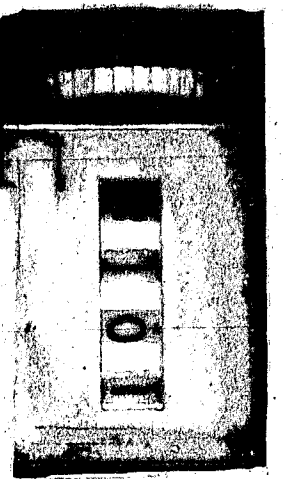
BY THE COURT:

Q Can you say the day or night you saw him? A I couldn't state the day or night.

BY MR. GREENTHAL:

Q Did you say it was between Christmas and New Years time? A Yes, sir. ✓

Q Now how many persons entered the baths on the night



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when Mr. Bennett was there; do you know? A I don't know, sir.

Q Do you know how many people were in the bath on the night of the raid? A I don't know, sir.

Q You were there? A Yes, sir.

Q Were you arrested? A Yes, sir.

Q And you are now under indictment yourself; are you not?

A Yes, sir.

Q You say that you saw Mr. Galbert there, on a great many occasions? A Yes, sir.

Q Now can you tell one single day or night that you saw Galbert at those baths, prior to February 21st? A He came there every Saturday night.

Q One particular day. Tell the jury one particular day.

MR. ELY: I object. He said--

THE COURT: I will allow him to answer.

A I don't know the dates.

BY MR. GREENTHAL:

Q Can you tell any particular month that he was there?

A Well he was there every month, for the last year, to my knowing.

Q Well was there any peculiarity about Mr. Galbert that would impress it upon your mind that he was the man that you

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saw there? A Yes, sir.

Q What is there peculiar about that man that impressed it upon your memory? A Well, he is very bald headed.

Q Yes. No other bald headed men ever come into that place?

MR. ELY: I object. He hasn't got there yet.

BY MR. GREENTHAL:

Q Did any other bald headed men enter your place, during the year that he came there? A Yes, sir.

Q How many? A I couldn't tell you.

Q More than a hundred? A I couldn't tell you.

Q Do you think two hundred? A I don't know.

MR. ELY: Oh, I object to that. It is foolish.

BY MR. GREENTHAL:

Q Well, will you say fifty? A I don't know that.

Q You don't know? A No, sir.

J O H N O ' K E E F E , a witness called on behalf of the

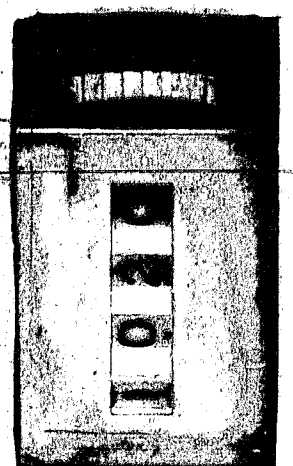
People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q O'Keefe, what is your business? A Turkish bath attendant.

Q Turkish bath attendant? A Yes, sir.

Q Where were you employed, before the 21st day of



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February, 1903? A In the Ariston Baths.

Q Where are they? A 55th street and Broadway.

Q In New York County ? A Yes, sir.

Q And how long had you been employed there? A One year.

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

Q And where had you seen him ? A I seen him at the baths.

Q Had seen him? What? A I seen him at the Ariston Baths.

Q You saw him at the Ariston Baths? A Yes, sir.

Q And when, before the 21st of February, if you recollect, did you see the defendant in the Ariston Baths? A I seen him there two or three times, but I can't place any date.

Q In the month of -- did you see him in the month of-- that was in February-- did you see him in the month of January?

MR. GREENTHAL: I object to the District Attorney leading.

THE COURT: I overrule your objection.

MR. GREENTHAL: Exception.

BY MR. ELY:

Q (Question repeated.) A Not in January; I don't remember.

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Q Well did you see him in December? A Yes, sir.

Q About when in December did you see him? A Well just around the holidays. I can't place any date.

Q Between Christmas and New Years, do you mean?

MR. GREENTHAL: Objected to.

BY MR. ELY:

Q Well just tell us what the holidays are? That is better. What do you mean by the holidays? A Well, before Christmas, just before Christmas.

Q Where did you see him before Christmas? A In the Ariston Baths.

Q This defendant? A Yes, sir.

Q Snee of it? A Yes, sir.

MR. ELY: Galbert!

Q (By Mr. Ely:) Did you ever see that man before (indicating Galbert)? A Yes, sir.

Q That is all. When did you see him? A At the Ariston Baths.

Q And for what period of time had you seen him at the Ariston Baths? A While I was working there.

Q I know. Well, you were working there. But, for what period of time. A For one year.

Q Off and on, for one year? A Yes, sir.

Q And do you remember at what intervals you saw him,

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during the year, about ? A Possibly once a week, or once every two weeks.

Q Once a week or two weeks, for a year? A Yes, sir.

Q Now did you ever see this man Galbert at the Ariston Baths, when this defendant was there? A Yes, sir.

Q And did you ever see the witness Galbert when this defendant was at the Ariston Baths, at any other time than the 21st day of February, 1903?

MR. GREENTHAL: I object to it, as leading.

I don't think it is fair, in rebuttal.

THE COURT: Objection overruled.

MR. GREENTHAL: Exception.

A Yes, sir.

BY MR. ELY:

Q How many times?

MR. GREENTHAL: Objected to as leading.

THE COURT: Objection overruled.

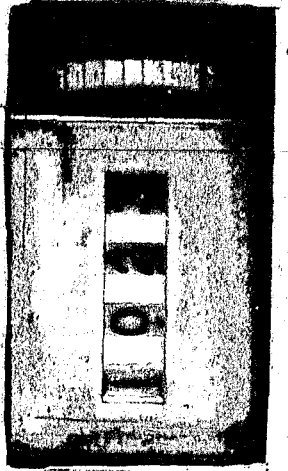
MR. GREENTHAL: Exception.

A Oh, I couldn't say how often I seen him there, when the other man was there, Mr. Bennett.

Q Oh, well, about how often do you recollect, before the 21st of February, 1903? A Two or three times.

CROSS EXAMINATION BY MR. GREENTHAL:

Q Mr. King-- A O'Keefe.



Q Mr. O'Keefe, you are also under indictment? You were arrested? A Yes, sir.

Q At that time? A Yes, sir.

Q How long have you known Mr. Connolly? A Going on three years.

Q Was he employed at the Ariston Baths at the same time that you were? A Yes, sir.

Q And were you employed there after this raid? A Well we didn't work there after.

Q You didn't? A We didn't go back to work.

Q How often have you seen Mr. Connolly, between February 21st and the present time; how often have you seen him? A Oh, about every other day, I should say.

Q And you have discussed this case with him? A No, sir.

Q Not a word? A No, sir.

Q Never spoke a word to him about this case? A No, sir; I never had no occasion to.

Q Did he ever speak to you and tell you what he was going to testify to here? A No, sir.

Q How close do you live to Connolly? A Well I live down near Coney Island, and Connolly lives up in Harlem.

Q Well how often would you see him, during a week?

A Well I wouldn't see him, except when I would be subpoenaed

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to court here.

Q Well how many times, have you seen and spoken to Connolly, between the 21st day of February and this trial?

A I have spoken to him every time I would meet him.

Q Well how many times would that be all told? A Well, possibly two or three times a week.

Q Well whereabouts do you live, in Coney Island? A I don't live in Coney Island.

Q Where do you live? A I live at 268 West Avenue, parkville.

Q Can you tell us any particular day on which you saw Mr. Bennett, at those baths, in December? A I cannot say any date. No.

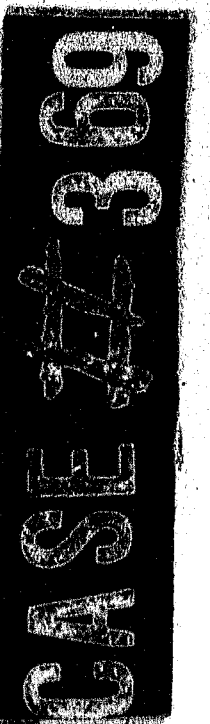
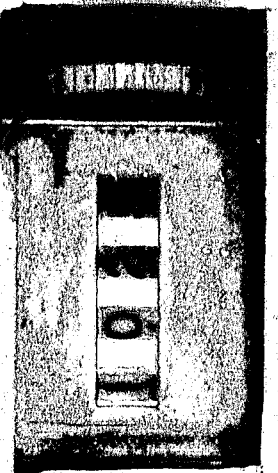
Q Or any particular day, when he was there in the month of November? A No, I can't. I never kept no track of dates.

Q Will you swear positively that you saw this defendant at the baths in the month of November of last year? A November?

Q Yes. A I wouldn't swear to it, no.

Q Will you swear positively that you never saw this defendant, in those baths, in the month of December, 1902? A December?

Q Yes. A Why, I think I seen him there, but I wouldn't swear to it.



Q You will not swear to it? A No, sir; I wouldn't perjure myself.

Q Will you say positively that you saw this defendant in those baths in the month of January, 1903? A I guess I did.

Q Will you swear positively that you did? Not what you guess. That is what we want. A I couldn't swear to it.

Q You couldn't? A No, sir; I wouldn't swear to it.

RE-DIRECT EXAMINATION BY MR. ELY:

Q What were you arrested for? A Violation of the excise.

Q Violation of excise? A Yes, sir.

Q And what became of that case? A I don't know yet.

Q Well you were discharged, weren't you? A We were paroled--

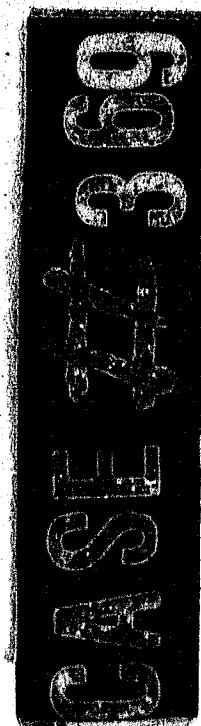
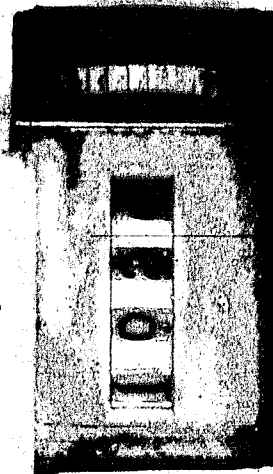
MR. GREENTHAL: One moment. I object. I object.

H A R R Y M c C U T C H E O N , being recalled by the

District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q McCutcheon, at any time of the night of the 21st of February, 1903, were you in the extreme northwesterly room, in the Ariston Bath establishment? A I was.



Q And who, if anybody, did you see there that you recognized? A This defendant.

MR. GREENTHAL: Objected to, as not in rebuttal.

MR. ELY: It is in rebuttal. The defendant denies that he has been in there.

THE COURT: Ask him the direct question.

MR. GREENTHAL: Exception.

BY MR. ELY:

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

Q And where was he? A He was laying on the cot.

Q Lying on a cot where?

MR. GREENTHAL: Objected to, as already answered.

THE COURT: Allowed.

MR. GREENTHAL: Exception.

A On the 55th street side; in the south part of the room.

BY MR. ELY:

Q What did you do?

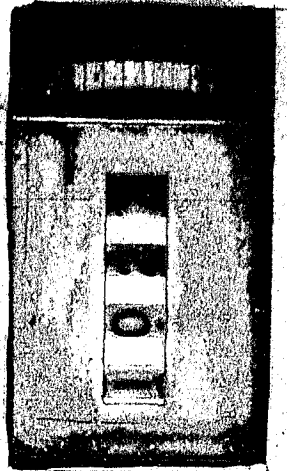
MR. GREENTHAL: Objected to.

THE COURT: When was this?

MR. ELY: The night in question, the 21st.

THE COURT: Has he not testified to all that matter?

MR. ELY: No, sir. This witness was not asked



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on that subject, and I didn 't ask him what occurred in that room at all. I simply took him on other points and this is in rebuttal of the defendant as I understand. He has denied that he was in this north-west room.

MR. GREENTHAL: If your Honor please, it should have been brought out on the direct.

THE COURT: Go on.

MR. GREENTHAL: Exception.

BY MR. ELY:

Q Did you leave that room, the northwesterly room, the extreme northwesterly room? A I did.

Q And where was the defendant, when you left that room?

A He was laying on a cot.

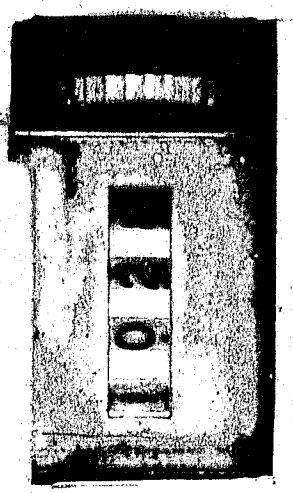
Q And, just before you left the room, what happened?

A Why--

Q To you? A To me. There were two men that were getting very familiar, and I was compelled to leave the room.

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

THE COURT: Yes. Strike it out.



THOMAS F. PHELAN?, being recalled by the
District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q On the night of the 21st of February, 1903, did you
have any conversation with the defendant? A I did.

Q In the hot room? A No, sir.

MR. GREENTHAL: Objected to. This witness has
been in the room when all these witnesses have been
examined, and I object, on the further ground, that
the witness has already testified, on his direct ex-
amination, that he had a conversation with the
defendant.

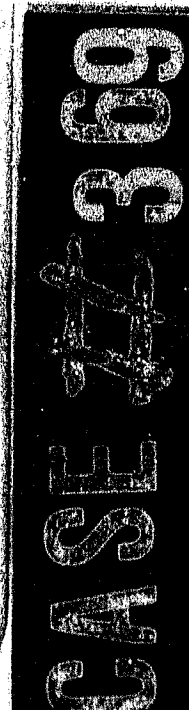
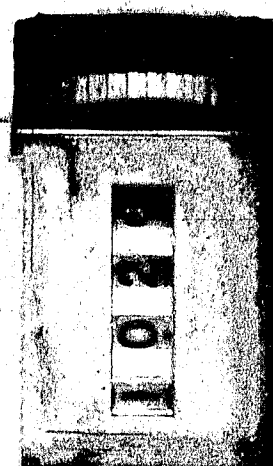
MR. ELY: Not in the hot room, or steam room.

THE COURT: Proceed.

MR. GREENTHAL: Exception.

BY MR. ELY:

Q Were you in the steam room or hot room, the Turkish
bath room, with this defendant, at any time on the 21st of
February, 1903? A No, sir.



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Q Did you offer this defendant a chair? A No, sir.

Q Did you tell this defendant to go and sit down?

A No, sir; no conversation with him whatever.

Cross examination none.

MR. ELY: That is the People's Case.

THE COURT: Is that the case on both sides?

MR. GREENTHAL: No, sir. I will recall the
defendant.

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SUR-REBUTTAL.

WALTER A. BENNETT, the defendant, being recalled by his counsel, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q Mr. Bennett, were you in the City of New York in the month of November and December and January? A The last day of---

MR. ELY: I object to that as already testified to.

THE COURT: I will allow him to answer.

A Sir?

BY MR. GREENTHAL:

Q Were you in the City of New York, in the months of November and December, 190², or January, 1903? A November and December, 1902---

BY THE COURT:

Q Were you? That is the question? A No, sir.

BY MR. GREENTHAL:

Q Where were you in the month of November, 1902?

MR. ELY: Objected to. He said that he was in Brazil, Indiana, before.

MR. GREENTHAL: Well, Connolly testified that

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he saw him in the month of December, 1902, in the baths.

THE COURT: But your question referred to November.

BY MR. GREENTHAL:

Q Well, where were you in the month of December, 1902?

A Well, I have been in so many towns and cities that I can't remember, but I have my book here to show where I stopped, in every hotel.

Q And were you in New York in the month of December, 1902? A No, sir.

Q When did your mother die, Mr. Bennett?

MR. ELY: Objected to.

THE COURT: Objection sustained.

BY MR. GREENTHAL:

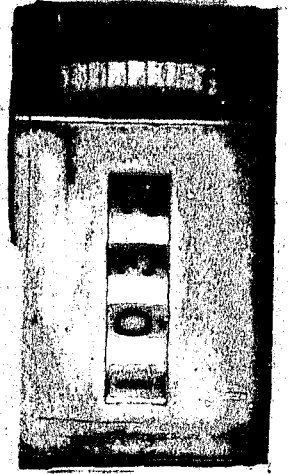
Q Where were you in the month of November, 1902?

MR. ELY: Objected to.

THE COURT: Allowed.

A Well, I will tell you, as near as I can, the different dates. I have been travelling all the month. On the 1st day of November, 1902, I was playing in Goshen, Indiana. I had sent my mother a telegram that morning---

MR. ELY: Objected to. I object to the history of his life.



A (Answer continued) I left there that night, after the performance, for Chicago, and was in Chicago on the 1st day of November.

Cross examination none.

GEORGE GALBERT, being recalled by counsel for the defendant, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q Mr. Galbert, it has been testified to here, by Mr. Connolly and Mr. O'Keefe, that you were a constant visitor at the Ariston Baths; is that true or false? A False.

THE COURT: Now, he has already testified that he was never there before. What is the use of bringing the witness backward and forward? He does not add anything to what his previous testimony was.

BY MR. GREENTHAL:

Q Do you know Connolly? A No, sir.

Q Or a man named O'Keefe? A No, sir.

CROSS EXAMINATION BY MR. ELY:

Q You never had any trouble with any of the rubbers at the Ariston Baths, did you? A Never.

THE COURT: Any further testimony?

MR. GREENTHAL: Yes, sir.

FLORENCE CLARK, a witness called on behalf
of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GREENTHAL:

Q Mrs. Clark, do you know the defendant Bennett?

A Yes, sir, I do.

Q Can you state where Mr. Bennett was in the month of
December, 1902?

MR. ELY: I object to that.

BY MR. GREENTHAL:

Q If you know?

A I think that he was in Chicago, at that time. I
had letters from him there.

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

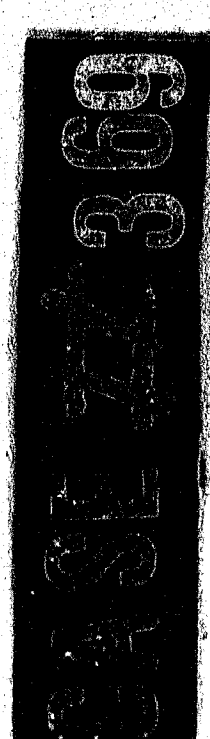
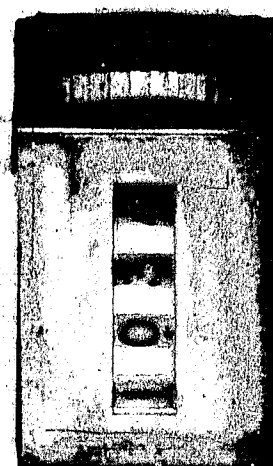
THE COURT: strike it out.

BY MR. GREENTHAL:-

Q Did you receive any communication from him, from
Chicago, at about that time? A I did.

MR. ELY: That is objected to and I move to
strike it out.

MR. GREENTHAL: Let me put my question, first.



THE COURT: Well, you know that it is an improper question. Why do you put it? Strike out the answer.

Cross examination none.

MR. GREENTHAL: That is the defendant's case.

THE COURT: Is that the case on both sides?

MR. ELY: Yes, sir.

MR. GREENTHAL: Yes, sir.

THE COURT: Then go to the jury.

MR. GREENTHAL: Won't your Honor indulge me until tomorrow morning, to sum up?

THE COURT: I think that too much time has been spent on this case.

MR. ELY: I would like the case to go over until tomorrow morning. I would only take half an hour.

MR. GREENTHAL: And I would only take 15 minutes, as far as I am concerned, tomorrow morning. I am sure, your Honor, that I will get through in 15 minutes.

MR. ELY: And the jury want to go too, sir.

THE COURT: I will limit you to 15 minutes.

MR. GREENTHAL: yes, sir, tomorrow morning that is all I want.

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THE COURT: Gentlemen of the Jury,

You remember my caution to you; and please consider the same as administered to you now.

Adjourn Court until tomorrow morning at half past ten o'clock.

The trial was then adjourned until Wednesday morning, June 10, 1903, at 10:30.

TRIAL RESUMED.

New York, June 10, 1903.

SUMMING UP FOR THE DEFENSE

of

MR. GREENTHAL.

....

If your Honor please;

Gentlemen of the Jury:

It is not my intention to re-hash the testimony that has been given by the various witnesses, because there is no doubt that it as fresh in your mind as it is in my mind.

To my mind, this case is purely a question of identity.

Now let us see whether or not the prosecution have proved, to your satisfaction, beyond any doubt that Mr. Bennett did the act described by those two officers.

Now, to start out with, you have the testimony of Officer Phelan.

He tells you that, on the night in question,

February 21, 1903, he arrived at the Ariston Baths, at about nine o'clock or 9:30.

MR. ELY: No; nine o'clock.

MR. GREENTHAL: Well, if I am mistaken, gentlemen of the jury, you will remember it.

Now, to offset that testimony, we have the testimony of the two Miss Dunns and a Miss Egan, who testified that they were at Miss Dunn's house, 307 West 28th street, on that particular day, February 21st, and that they know positively that Mr. Bennett did not leave that house until 25 minutes of eleven.

Now, if that story be true, then my friend, Mr. Phelan, must be mistaken as to the man that he was watching on that particular night.

You saw those ladies on the stand. They are wholly disinterested witnesses. They have no reason to come here and testify falsely, or testify in behalf of Mr. Bennett.

Has Mr. Ely contradicted their testimony? Certainly not. It stands there unimpeached.

Now, I do not start out, gentlemen of the jury, to say or intimate, for one moment, that these officers have gone upon that stand and testified falsely against Mr. Bennett or against Mr. Galbert. That is not my

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contention.

I do not claim, for one moment, that they had a motive for going on that stand and testifying falsely against Bennett or Mr. Galbert. But I do say that they were honestly mistaken, as to the identity of a man who, they claim, they saw in that northwesterly room.

Now, you have the testimony of the two officers, who tell you that the room was absolutely dark; no lights in that room, except a light which shone from the adjoining room, in other words, casting a light in there.

They tell you that the cot on which the defendant lay was two feet from the wall and no light shone on the couch where the defendant lay with Mr. Galbert.

The testimony of the other officer is to the effect that, after Officer Phelan had left the room, with the defendant Galbert, he remained in that room for a short time and left Bennett in that room. That is his testimony.

Not that he followed Bennett from the dark room into the brilliantly lighted room, but that he left Bennett in that dark room. That is the testimony.

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Now, I would say that if Mr. Bennett had left that room before the officer did, and that, if the officer followed Mr. Bennett out into the brilliantly lighted room, he might have been correct in his identification. But there is no such testimony here.

Just think, for one moment, gentlemen of the jury. Is it possible for any one to identify another person, a total stranger to you, in a dark room?

Or, will any of you gentlemen believe, for one moment, that Mr. Bennett and Mr. Galbert, or any man or any living being would commit the act described by Mr. Phelan and Mr. Fitzsimmons in their presence.

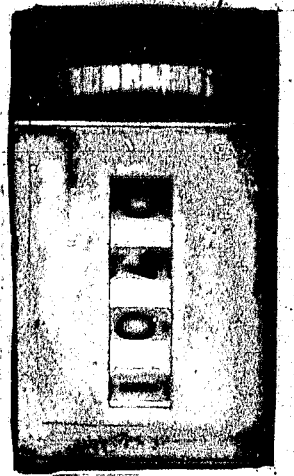
Mind you, gentlemen, they testified that they were right up against that couch, when that act was committed.

Can you believe any such testimony as that?

Is it reasonable to suppose that persons would stoop so low as to commit that kind of an act, especially Mr. Bennett or Mr. Galbert, under such circumstances?

And it has been testified here that Mr. Galbert was arrested in his room, lying on the couch.

Don't you believe, for one moment that, if people wanted to commit these practices, that they would have gone into secrecy, gone into their rooms and lock-



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ed their door and committed those acts?

Would they have committed them in the presence of ten or fifteen people, as testified to by the officers?

Have they produced one of those citizens here today, to testify that they saw any of those acts committed?

They were in that room, 18 by 20 feet, a small room.

Now, gentlemen, you understand that we have in the city of New York here, and under the control of the District Attorney, a large police force, and these witnesses would have been arrested and incarcerated in the House of Detention, and detained there until this case came on, if the officers believed that they saw anything of this kind.

There is not a solitary disinterested witness in this case. It is a case of police officers, outside of Connolly and O'Keefe.

Now, what do they testify to?

Mr. Connolly tells you that he thinks he saw Bennett, at those baths, in the months of November and December, 1902.

Has Mr. Bennett ever denied that he was in that

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bath? Hasn't he frankly told you, gentlemen, that he has been going there since 1897.

Has the District Attorney produced one solitary witness, to go upon that stand, and tell you that this is an immoral place, and that anything wrong had been going on there prior to this time?

Who would be in a better position to testify to that fact than Mr. Connolly?

He tells you that Mr. Bennett has been going there for three years. Has he told you that he saw Bennett or Galbert or any other person commit an act of indecency in that place?

Has he told you that he saw Galbert or Bennett do anything wrong on that night?

Why, Connolly testified that he believes that he saw Bennett at 11 o'clock that night.

No one is positive as to the time.

Even Fitzsimmons will not tell you what time he saw the defendant, Bennett. He is guessing at the time.

Now you, gentlemen, remember that, just prior to the raid, all the prisoners, something like 75 or a 100 people who were arrested that night, who were all dressed in the sheets, none had clothing on, they were

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all huddled into one room, in the parlor; and that the different prisoners were identified as they came out of that room by the various officers.

Now, who made the identification of the defendant, Bennett? Phelan or Fitzsimmons?

Phelan tells you that he first identified the defendant, Bennett.

Fitzsimmons said, "I first identified the man."

Now, who identified this man?

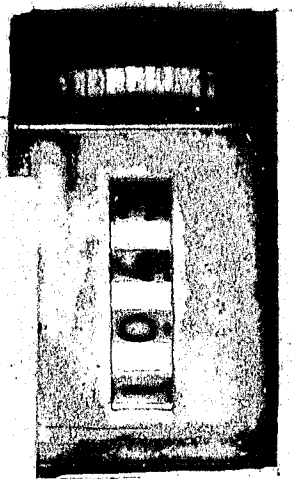
Now, certainly, they contradicted themselves upon that point; and that is a very material point.

Remember, now, gentlemen, there were from seventy-five to one hundred people in that room, at the time this man was identified.

Then these defendants are placed in another room, and from that room, they are escorted to their dressing rooms.

Now, it doesn't make a particle of difference who escorted Mr. Bennett to his dressing room on that occasion.

The question in this case is: Is he the man who was in the northwesterly room, on that night? That is the question in this case.



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It does not make a particle of difference whether he had a conversation with Phelan, or whether he had a conversation with McCutcheon, or with anybody else, there.

You are to try the sole question, whether or not he is the man that permitted Galbert to commit the deed as described by the officers.

Now, Mr. Fitzsimmons wanted to be very, very positive about his testimony.

When I asked him to tell you, gentlemen, how many people were in that place on this particular night, he could not tell you.

I asked him if there were a hundred, and he said no, and I asked him if there were 75 and he could not tell; or 50.

He also tells you and both officers also tell you that, he did not take Mr. Bennett or Mr. Galbert to the station house; that he did not see Bennett or Galbert after he identified him coming out of that room in that sheet.

He tells you that they were all taken to the police station, in the patrol wagon; that he saw the defendant, Bennett, at the Police Court, the next morning. That is what he tells you.

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Now, I say to you, gentlemen of the jury, this is an awfully serious charge against this defendant. I say this charge is more serious than a charge of murder in the first degree. I would rather be on trial here for murder in the first degree, than to stand here charged with this crime. I think it is the most heinous crime on the calendar, a disgusting crime.

Be careful, gentlemen, before you convict this man. It means an awful lot to this defendant. The punishment is very, very severe, and he is liable to be confined in State prison---

MR. ELY: Oh, I object to any statement of the penalty.

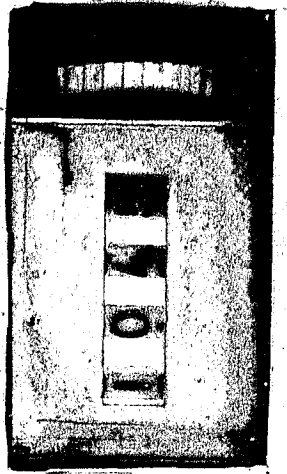
MR. GREENTHAL: Well, the statute provides for it.

MR. ELY: But the jury have nothing to do with that, sir.

MR. GREENTHAL: I know they have not, but that is the law.

Now the District Attorney will tell you, gentlemen, that this defendant, Mr. Bennett, has all the motive in the world to go upon that stand, and testify falsely.

He will tell you that, and he will run up and



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down upon that floor, and he is going to pound that table, and he is going to frighten you people into a verdict; and he will tell you that this defendant has all the motive in the world to go upon that stand, and testify falsely against----- in order to clear himself of this enormous charge.

Now, gentlemen, do not get frightened when Mr. Ely gets up and parades up and down that floor. It is a mighty good thing that we have a high ceiling here, or he would pull down that ceiling.

Now, he had as much right to take that stand and testify as anybody else.

Do you believe that everybody would go on that stand, and testify falsely?

Take yourself, as a merchant. You purchase goods from a merchant, today, and the goods are not what you want, or are not up to the sample, and you send them back, and your creditor will bring an action in a civil court, and you defend that action.

And the lawyer for the plaintiff will say that you have every motive to go on the stand and testify falsely.

Why? Because you want to protect your own interests, and there is nothing wrong about that.

Now, the defendant went on the stand and he told a plain, honest story, and he must, certainly, have impressed you that he was telling the truth.

And we produced Mrs. Bridge, a splendid looking woman, who lives in 72nd street.

And she says she has known him for many years, even from his childhood. And she testifies that he had always borne an excellent reputation, up to the time of his arrest.

And we produced other women, ladies, that also testified to the same effect.

Now, consider this case carefully; and if you have a reasonable doubt, on the evidence, acquit him.

I believe that you feel as I do, that this man-- I want to call your attention to one more particular fact.

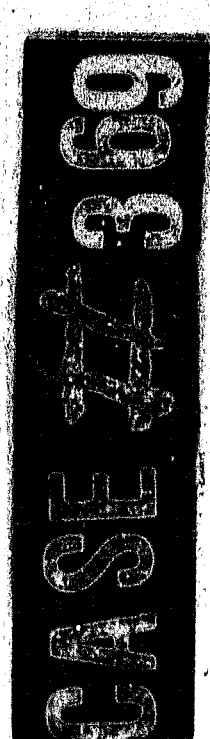
The witnesses Connolly and O'Keefe went upon the stand, and admitted, under oath, that they are under indictment.

MR. ELY: No, they did not.

MR. GREENTHAL: They certainly did.

MR. ELY: No; O'Keefe did not.

MR. GREENTHAL: Yes. But he said that he didn't know what had become of his case. And Connolly said that



he was under indictment.

MR. ELY: No, that is not the evidence. O'Keefe was asked what he was arrested for and he said for a violation of the Excise law.

MR. GREENTHAL: No, that is what you asked him. I asked him, in cross examination, what had become of his case, and he said he didn't know.

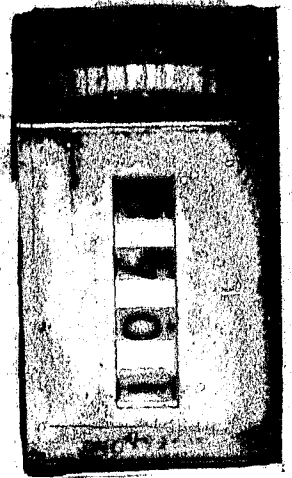
MR. ELY: You asked him if he was under indictment, and if he was arrested, and he said yes, that he was arrested. That is the way he replied to your question.

MR. GREENTHAL: Well, now, gentlemen, I have told you all that I desire to say, in this case.

But I do not want you, gentlemen, to lose sight of the fact that this man has a good character, an excellent character, with good people behind him; and I want you to consider this case carefully, and think it over well, before you find him guilty.

This is an enormous charge against him; and do not get frightened when Mr. Ely paces up and down the floor. Take it easy.

All right, Mr. Ely, I have done.



CASE 369

SUMMING UP FOR THE PEOPLE

of

ASSISTANT DISTRICT ATTORNEY JAMES R. ELY.

.....

May it please the Court:

And you, Gentlemen of the Jury,

This is certainly a very serious charge, and the People do not want any innocent men convicted; and you are to give the defendant the benefit of every reasonable doubt; and if, after having given him the benefit of the reasonable doubt, or, if you find that there is a reasonable doubt, you are uncertain as to his guilt, he is entitled to an acquittal.

But, gentlemen, if, after having considered the evidence in this case, you believe the testimony of the officers, there is not any reasonable doubt left in the case; and, under your oaths, as you have sworn to bring in a verdict upon the evidence produced here, in this case, and upon that evidence alone, without sympathy, or influence from any extraneous consideration, of any name or nature whatsoever, but under your oaths, you are bound to find him guilty.

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Now, before I begin to analyze the testimony, I will just call your attention to one or two things that are admitted, about which there is no dispute.

There is no dispute that, on the 21st and 22nd days of February, 1903, the defendant, Bennett, was at the premises at the northeast corner of 55th street and Broadway, 1730 Broadway, in the City and County of New York, known as the Ariston Baths.

That he was at the Ariston Baths, at the time the offense charged in this indictment, and testified to as having been committed, was committed.

Also, that the witness George Galbert was there at the same time.

Also, that the defendant and Galbert were both arrested there.

Therefore, they were there from the time of the commission of the crime, if the crime was committed, according to the testimony of the People, until the raid was made.

Now, that much is admitted. There is no question about that.

You remember the testimony of the officers in the case, Phelan and Fitzsimmons. It was positive and direct, that they, and each of them, did see the defendant

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and the man who gave his name as George Galbert commit the acts charged in this indictment, in the extreme northwest room of the Ariston Baths establishment, at about 1:30, or a little after, on the morning of the 22nd of February, 1903.

And they have not been shaken one jot or tittle in their testimony.

Now, what is the defense?

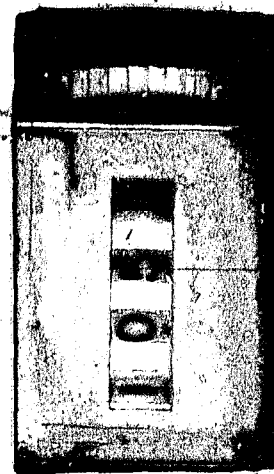
As counsel outlined in his opening, the defense was to be mistaken identity.

But, during the progress of the trial, he did not seem to make much headway with that defense.

But, in his summing up, he has harked back; and he says here that Fitzsimmons and Phelan were mistaken, in the main, and that they did not identify Bennett.

But you must bear in mind that Fitzsimmons had seen this same defendant on the 14th. The testimony is plain and direct, that Fitzsimmons had seen the defendant, on the 14th of February, 1903, at this same bath place; and that he and Phelan saw him, on the 21st; and that they had a conversation with him, before they again saw the defendant in the extreme northwesterly room, in that bath establishment.

And, furthermore, you will recollect that Mc-



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Cutcheon saw the defendant, in that extreme northwesterly room.

Now, I just want you to remember that.

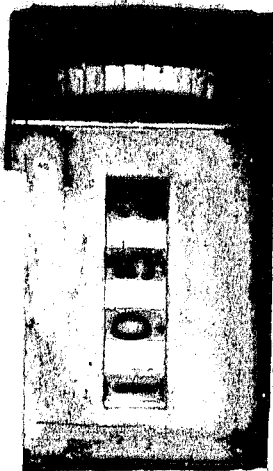
There are two men, three men, who all identify this man, the defendant, on the night of the 21st; and one man, Fitzsimmons, who had seen him before, and knew him before and recognized him again.

And they, Fitzsimmons and Phelan, saw these acts performed, just in front of the doorway of a room which had no light in it, but was lighted by a reflected light from a brilliantly lighted adjoining room; and they testified that it was perfectly lighted, enough for them to see each and every one of the acts committed. So much for the identification.

Now, I want to call your attention to a further fact, and that I will allude to later. No; I will allude to it now.

Why, if this defendant were innocent, should he have denied absolutely that he was ever, on the night of the 21st of February, and the morning of the 22nd day of February, 1903, in that northwesterly room?

He denied absolutely that he had ever been in there. He said that he was in the westerly room, but that he had never been in the northwesterly room,



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on the night in question.

And yet he comes to you and says that the officers were wrong, when they said that there were three couches there, because there were only two.

How did he know that fact, if he was not in that room? And why did he deny that he had been in that room?

What is the motive there? Because, forsooth, Phelan and Fitzsimmons had seen him there, and so had McCutcheon, and there was where the acts were performed.

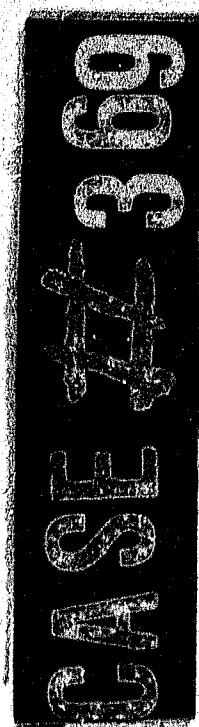
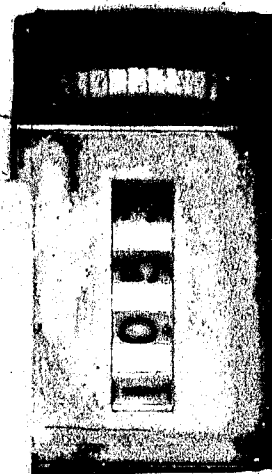
Naturally, he wanted not only to plead failure of identity, but an alibi.

He said he was in the next room, sitting on the table, reading a magazine and the Evening Telegram; but that he was not in that northwesterly room.

But how did he know that the officers were incorrect as to the number of couches, if he was not in that room?

So, you have nothing at all in the case, on the defendant's side, as to the facts, except the denial of the defendant, and the denial of George Galbert, or, rather, George Caldwell, alias George Galbert, who, at the time of his arrest, gave a false name and a false address.

Now, who are these two men?



Why, the defendant, as his counsel stated I would say to you, is the person who, of all others, is most anxious to have you believe any defense that he may interpose here.

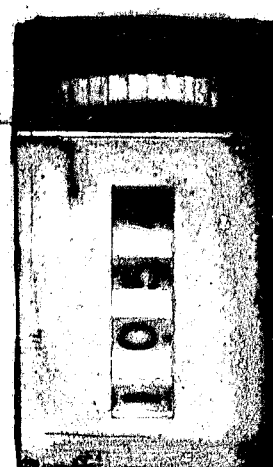
He has more at stake than anyone else. He has so much at stake that he might be led to testify falsely, to commit perjury, or to put in anything, by way of defense, by which he might hope to escape.

And what about Caldwell, alias Galbert? Tarred with the same brush, an accessory in the same crime. Is he not here to swear himself out of this case, as well as that man (indicating the defendant)?

That is absolutely biased testimony; and that is the only testimony in the case, as far as these acts are concerned, on the part of the defendant. Do you believe it?

And the defendant said that he was never in the northwesterly room, but he knows the number of the couches and says that the officers were wrong, quite wrong.

He is an habitue of the place, and so is Galbert; and yet neither of them ever saw the other, in his life, until they met in the Police station, forsooth, at about three or four o'clock on the morning of Sunday,



the 22nd day of February, 1903. Never in their life, according to each of them, had they seen each other before, though, according to the testimony of the People, they had been to the baths there before.

But Galbert goes ^{the} a whole way, and says that he had never been to the Baths except on this occasion, and that he had only happened in by chance.

But Connolly and O'Keefe testify that he had been an habitue there for a year or more, coming once or twice a week, right along.

Are they lying, Connolly and O'Keefe?

Did they strike you as being honest men?

What motive have they to come here and tell anything that is not true?

O'Keefe tells you, as well as Connolly, that this defendant was there, at the Baths, between the holiday season, during the holiday season.

Connolly testifies to it positively, as did O'Keefe, on his direct examination, and, upon cross examination, O'Keefe, when pressed, said, "Well, my best belief is that he was there, but I am not absolutely positive."

Now, did not that strike you as being the statement of a fair man?

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And then they said, for the defense, "Name the night that he was there, any night."

Why, dear me, if I am in the habit of seeing persons frequently, I do not recollect the exact day or hour, if I see them right along.

I can say that I have seen the person once a week right along. "Well, but what day?" I am asked. I answer, "I don't know, unless there is something which especially directs my attention to the day itself."

I see men that I know by sight very frequently, day in and day out, perhaps, but I do not remember the day, unless there is something special that attracts my attention to the day.

And they remembered that they had both seen him there on the 21st day of February, and there was something doing on that day to attract their attention to it.

Now, why does the defendant say that he was not in the City, during this holiday season?

Was it that he was afraid, knowing that he had been there and had seen his confrere, his friend, Galbert, that it might be brought home to him, and that he was hedging, casting an anchor to windward for that.

The further testimony for the defense as to the

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time that the defendant arrived there, is so trivial, and smacks so much of pre-arrangement, that it is scarcely worth while to notice it.

You will recollect that each one of these various women, the lodging house keeper and her friends, knew absolutely the exact hour and with precision.

They would immediately get off the "twenty-five minutes to" business. But one was mistaken, and got it, "twenty-five minutes after ten" and then she looked humiliated. But all the rest got it "Twenty-five minutes to eleven". All of them said that they knew the defendant had left those premises at twenty-five minutes to eleven.

"Well, how did you know it?" "Time to go to bed." "Well, how did you know?" "Oh, I looked at the clock."

And then they were going out to buy groceries, the ordinary thing for them to do on any Saturday night, and not a matter of such importance as to make them recollect that special Saturday night.

Then, further, the defendant knew exactly what time he left there, and he tells you his itinerary from the place in 28th street: Walking up to 58th street and buying five cents of beer, in Reisenweber's, and

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standing there and then looking at the clock again, then going down to these Turkish baths.

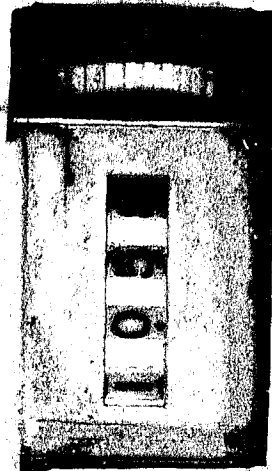
And he said that he knew, although he did not know whether Reisenweber's clock was going or not, that it must have been a quarter to eleven, when he got down to this place.

What gentleman among you would be able, after the lapse of some months, to tell, with such absolute accuracy, the exact itinerary as to every circumstance connected with a certain evening, even though something else had happened that was peculiar afterwards?

Could you tell that you had walked up, the night of the 21st of February at 25 minutes of 11, away up to Reisenweber's?

And there is no ostensible reason that he has given for going to Reisenweber's, unless you infer that the reason was that he went there so that he could consume time. There is no ostensible reason that he has urged here why he should have gone up to Reisenweber's, or why he did not go directly to this Turkish bath establishment, where they did sell beer.

You remember that O'Keefe was arrested for a violation of the Excise law. So, they did sell beer there.



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Why did he go to Reisenweber's to take his drink? Why did he not go directly to the baths for it?

Why? Because, then, he might have got there too soon for his purposes, and he wanted to avoid being there at the time when this conversation occurred between himself, Fitzsimmons and Phelan, when he said that he would not let Fitzsimmons go with him to his room, because he liked fat boys.

That is the reason. Can you see anything else in it? Can you?

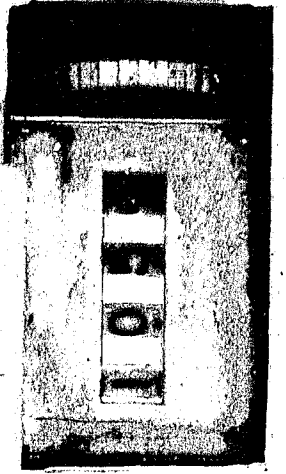
Bear in mind all the time-- for I am going to hark back once or twice to it-- bear in mind, all the time, too, the defendant's absolute denial that he was in that northwest room at all, that night. Remember, too, that McCutcheon saw him there.

Remember, too, that Phelan saw him there.

Remember, too, that Fitzsimmons saw him there.

And remember, also, that Fitzsimmons had seen him and identified him a week before, at the same place, these Ariston Baths.

Now, gentlemen of the jury, I do not think that I need say very much more about the testimony for the defense.



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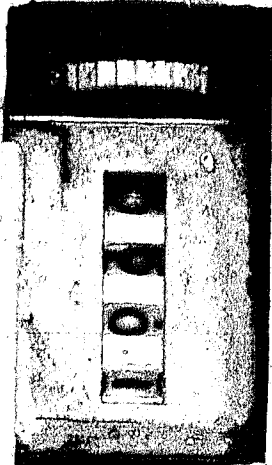
But I will say one thing, in passing, and that is: Does it not strike you as perfectly amazing that this defendant, who has been here, in New York, he says, off and on, for three years or more, for, anyway, he has known of these Baths from 1897, because he was an habitue of them from 1897; do you not think it is amazing that this defendant is unable to produce a witness as to good character, except a woman, barring the minister?

Just think of it. There is not a single witness who testified to that man's character, except women. They think he is a very fine fellow.

But, if he is the creature that the People claim they have proved him to be, do you suppose that any one of these women would know anything about it?

Do you think that a man who has an unnatural taste, a carnal appetite for connection with his own sex, associates with women to any great extent, or shows the cloven foot to them?

Think of it. Not one person, except, forsooth, the clergyman, who says that he never heard the defendant's reputation discussed in his life, not one person, with that exception, appears to give the defendant a character, except women.



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And Mrs. Frances Bridge, or whatever her name is, to whom counsel has referred, has appeared here and told you that she knew him as a bell boy, when he was about 15 or sixteen years of age.

Well, we have all been to hotels and apartments in our time; and we have all seen boys that were bell boys. How much did we know about them? They may have been active and attentive to us, for a consideration, but what did we know of their character?

She has recommended him. What does she know about him?

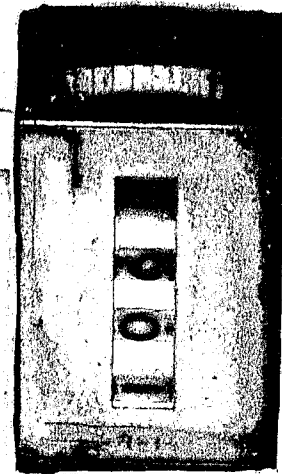
What are such recommendations ordinarily worth?

And she had been out with him twice, to the theater; and on that she bases her statement that he is of a decent and respectable character.

Doubtless he is, as far as she knows. And that is a matter on which she would, from the very nature of the case be in absolute ignorance.

And mark you, now, that is very significant: that there is no one here to testify to the character of that man, except women and a clergyman, who knows nothing of his reputation.

Would the clergyman have known, would he have attempted his practices on the clergyman? Why, the ques-



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tion answers itself. And the clergyman never had heard his reputation discussed.

Then, so much for the defense.

The testimony of the prosecution is simple and direct.

The witnesses for the prosecution have no such bias, and I say so advisedly, as this defendant and his co-witness, Galbert, have.

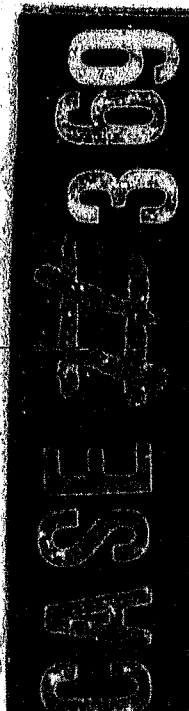
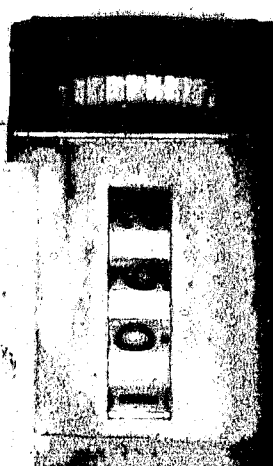
And now I ask if they have any bias whatsoever, I ask what bias you could possibly conceive that these men could have, and I now limit it to Fitzsimmons and Phelan, who are the principal witnesses for the People, what bias could they, or either of them have against that man?

Why should they desire to railroad him? Why should they have an antagonism against that man at all?

I asked him if he had ever had any trouble with any of these officers, in order to give him an opportunity, if he had had any, of saying it, because the People are as anxious to have the truth brought out, as anybody else.

But, no. He never had had any trouble with them, or either of them; and so said they, too.

Did they not strike you as honest, respectable,



decent, conscientious, careful men in their testimony?
Did they not so impress you?

Could you see any possible reason why they
should fail to state the truth, and the truth only?

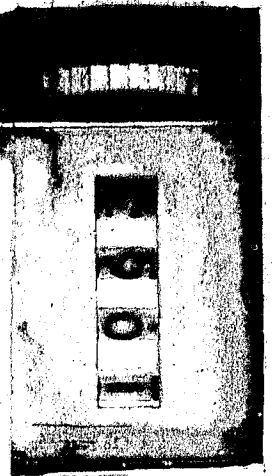
And, from their statements and the facts, do
you not believe their story absolutely? Was it not
irresistible? Were they tripped or trapped in any way?

Why, Phelan went there at nine o'clock. Fitz-
simmons went there at half past nine. They saw the de-
fendant at eleven.

The defendant came along and said to Phelan,
"Won't you come to my room and have a good time?"
And Fitzsimmons said, "Can I go too?" And he said,
"No. I like fat boys," and Phelan said, "No; I can't go
now; I have my friend here, and I will see you at half
past two."

They were acting under instructions from Act-
ing Inspector Walsh, to go there and get evidence, but
to do nothing until the Inspector and the other officers
got there.

There were only six officers there, and there
were 75 or 100 other people there, most of them naked,
and what were six officers going to do with so many, if
they started in to make arrests?



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And they say that, afterwards, they saw the defendant trailing his sheet behind him and kicking up his legs and making motions with his body.

And they say that, afterwards, they saw the defendant in the northwesterly room of those baths, lying on a couch. They were standing right by the couch, in front of it.

To the left was Galbert, or Caldwell.

And they stood there and Caldwell went to the couch and took the leg of this defendant, and raised it, and inserted his penis in the anus of the defendant and had carnal connection with him.

And they say that, thereafter, those two men lay there, and kissed and hugged each other, and committed a further act of sodomy, which it is unnecessary for me to discuss.

And the only thing that you have, as against that direct, positive testimony of these men, who, I am sure, have impressed themselves upon you, as being truthful and honest men, is what?

The denial of the defendant, and the denial of his accessory.

They are the two people who were engaged, if you believe the testimony of the People, in this most unnatur-

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al and awful crime in that room, on the morning in question.

There is no escape from that, absolutely no escape from it.

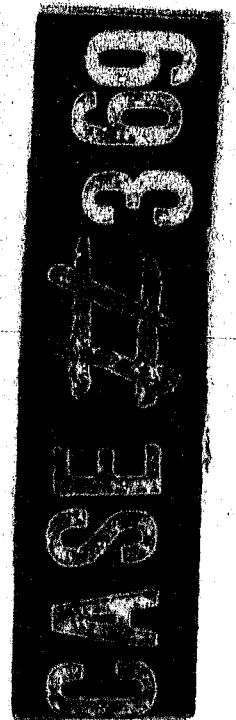
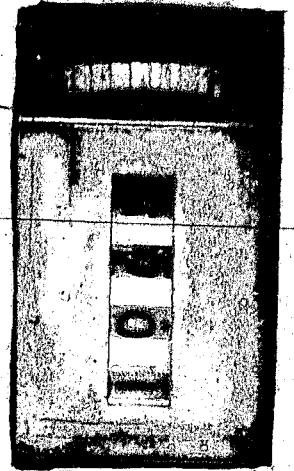
Either Fitzsimmons and Phelan have come here and perjured themselves, perjured themselves knowingly; or else they have told the absolute truth, and this defendant is guilty.

Then, as I have said before, I believe that no one who has heard the testimony and seen those witnesses Phelan and Fitzsimmons, has any other opinion in the world than that they are honest, truthful, law abiding people, who have as much respect for themselves as have you or I.

Police officers, of course! Forsooth, it is cast in their teeth.

But, gentlemen, there are police officers, aye, most of them, who are as honest and upright and faithful in their duties as any man in any walk of life, and these officers, I am sure you will believe, are true and faithful and honest men as you have seen for a long time.

Now, gentlemen, I want to call your attention, in closing, to the fact of the denial of the defendant



that he ever was in that northwesterly room, on the evening in question, but that, afterwards, he remembered more accurately, as he said, the couches in the room, on the night in question, than the officers, who swear that they were there.

I want you to remember that he said that he never had seen his co-habitue of the baths, Galbert, until the morning of Sunday, the 22nd, when the testimony for the People is that Galbert and he had been there, at the same time, and for a year or more.

I want you to remember the testimony of the defendant, when he said that he was away at Christmas, and the testimony of O'Keefe and Connolly, who said that he was there in the holiday season.

And I want you to remember the bias on the part of the defendant, and to ask you if you can come to any other conclusion than that the defendant was absolutely lying in his defense, on the stand here.

And if, gentlemen, you find that the defendant or any of the witnesses, has intentionally said what was false, knowing that it was false, you can disregard his entire testimony, and cast it out.

Remember, too, the attempt that he has made to give himself a character, by these women.

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All his character witnesses are women, or so-called women, except the minister. He has called Galbert and all the rest, except the minister, who are--- what shall I say?-- who are all girls together.

Gentlemen, on all the evidence and the circumstances in this case, I ask for a verdict of guilty of sodomy, as charged in this indictment.

THE COURT: Mr. Greenthal, have you any requests to charge?

MR. GREENTHAL: Yes, sir; I have, sir. I have written them, but I don't know whether your Honor will understand my handwriting.

THE COURT: Please hand them up to me.

MR. GREENTHAL: There they are, sir.

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*Exh.
vs
Walter Bennett
June 10th '03 -
Goff, A. -*

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THE COURT'S CHARGE.

Gentlemen of the Jury,

You are the exclusive judges of the facts in this case. You must accept the instructions which I give you upon the law of the case, and you must obey those instructions. So far as the facts of the case are concerned, they are within your exclusive jurisdiction to determine; but, as to the law of the case, you must accept and abide by the instructions which I give you.

The defendant is charged by the indictment with the commission of the crime known to the law as sodomy.

I will read you the definition of that crime as it is given by the statute, using so much of the section of the statute as is applicable to the case on trial:

"A person who carnally knows any male person by the anus, or by or with the mouth, or voluntarily submits to such carnal knowledge, is guilty of sodomy."

You will, I am sure, appreciate the clearness as well as the brevity of that provision of law; and I am, also, sure that you can easily comprehend its meaning,

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and carry it in your memory, during your consultation regarding this case.

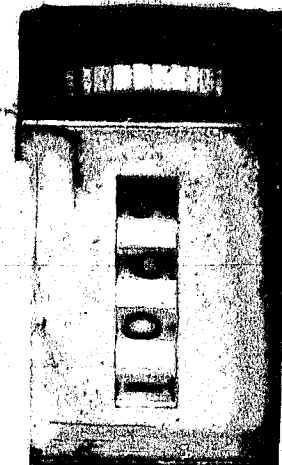
The prosecution claims to have proven, by the evidence submitted to you, that the defendant voluntarily submitted to an act of carnal knowledge, committed by a person named George Galbert, and the act described by the witnesses for the prosecution consisted in the insertion by Galbert of his person into the anus of the defendant.

It is further claimed by the prosecution that, immediately succeeding that transaction bet een these two men, and as part of the relationship between them, the defendant performed another act of carnal knowledge upon the person of Galbert.

You are entitled, as jurors and judges of the facts, to know all that took place there, so far as it may be within the knowledge of the witnesses for the prosecution to narrate.

The defendant is not indicted, or on trial for, doing the act that the witnesses describe upon the person of Galbert. That constitutes a different act. He is indicted and tried for voluntarily submitting to an act of carnal intercourse between Galbert and himself.

I do not intend to, and I am sure that you do



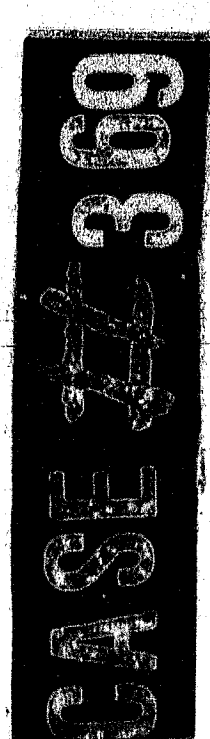
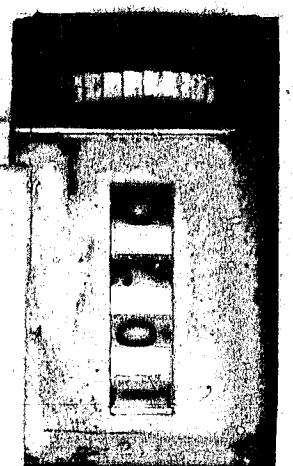
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not require that, in any form or shape, I should give further attention, or make further reference to the disagreeable details of the testimony. They are no doubt fresh in your recollection.

It is a matter to be very much regretted that a Court and jury are compelled to listen to the revolting details that have been laid bare here before you. But the law, in its wisdom, found it necessary to condemn such practices, and to characterize such practices as crimes. It, therefore, becomes our duty to hear such testimony, and to pass upon the testimony as to the guilt or innocence of the person accused.

It cannot be denied but that the character of the offense charged against this man on trial is of a revolting nature; and I now caution you that you must be careful not to allow the revolting and disgusting character of the charge against the defendant to prejudice you against him to an extent that would interfere with your fair and impartial determination of the question of his guilt or innocence, upon the evidence submitted to you.

He denies the charge made against him; he denies that he did the act, or submitted to the act, narrated by the witnesses for the prosecution.



So that there is presented to you a clear conflict of testimony between the witnesses for the prosecution and the defendant himself; and you are the judges to determine upon that conflict, where the truth lies. You are called upon to pass upon all the testimony, and included in that testimony, necessarily, is the testimony of the witnesses for the prosecution.

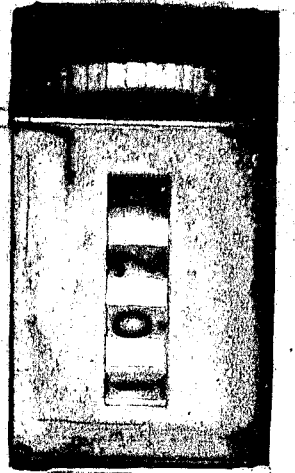
Two witnesses have sworn that they saw the act committed upon the body of the defendant. Another witness has sworn that he saw the defendant there, in certain rooms and in certain positions, and under certain conditions.

Two other witnesses, who were attendants in this bath, have sworn that the defendant was a visitor there, more or less frequently.

Now, gentlemen, your good judgment, your fairness and sense of justice are called upon to express, by your verdict, whether the charge against the defendant is false or true.

Can you say, upon this evidence, that those witnesses have sworn to what is false?

In weighing and analyzing their testimony, you have a right to consider whether or not they have concocted this whole story, without any foundation in fact



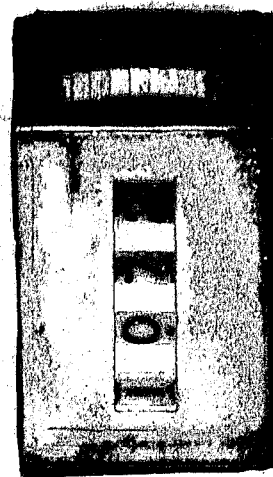
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or in truth.

Can you say, from the testimony given by those witnesses, from their manner and their appearance, and the way in which they gave their testimony on the witness stand, that they deliberately and wilfully conceived the making of this charge against the defendant, without any justification or foundation in fact?

Is there anything in the testimony that you can perceive that would justify you in coming to the conclusion that those witnesses were actuated by any motive to testify falsely against the defendant? Has it been shown that they were actuated by any spirit of revenge, or animosity against the defendant; or by any hope of gain or reward, or by any other motive or impulse that would move them to take this witness chair, and, in your presence and hearing, deliberately and wilfully swear to a falsehood? Can you, as judges of the facts in this case, so find, upon this evidence?

If you come to the conclusion that the witnesses for the prosecution have sworn to the truth, that they actually saw the acts which they narrate performed; that they, as officers, in the discharge of their duties, have simply performed their duty in telling to you truthfully and honestly what they saw in those baths;



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and you believe that they have done so, then it would be your bounden duty to declare the defendant guilty of the crime of sodomy.

There is no middle ground, gentlemen; for the defendant either did the act charged against him, or he did not. If he did not, he should be acquitted; if he did, he should be convicted.

Testimony has been given, on the part of the defendant as to his good character, as to his being a decent and respectable man. It is proper that such testimony should be given to and considered by the jury. Testimony of good character may, of itself, sometimes, create a reasonable doubt, where otherwise it would not exist.

If you find that such testimony creates a reasonable doubt as to the defendant's guilt, it is your duty to give him the benefit of that reasonable doubt, and to acquit him.

But the quality and the value of such testimony, like all other testimony, is to be judged and determined by you. You are to say how much value you will attach to it. You are to judge of the quality of the testimony as well as of its value, of the persons who gave the testimony, their reliability, their opportu-

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ties for knowing the defendant's character, their opportunities and advantages for being able to give a truthful description and account of how the defendant was regarded.

The mere fact that a witness swears to the good character and reputation of a person on trial does not conclude the jury on that question; not any more than they are concluded by the testimony of any other witness upon any other subject. It is within your power to say what value you will attach to such testimony, whether it is truthful, or, even if truthful, whether it is mistaken, or whether the person giving it has had a reasonable and fair opportunity to know, in fact, the character of the defendant. All these questions are for your consideration.

The defendant is entitled to the benefit of a reasonable doubt on every important and material question in the case, upon the whole evidence, or the lack of evidence in the case.

I am sure, gentlemen, that it is not necessary for me to give you any further definition of what a reasonable doubt is than the meaning created by the phrase itself. You are intelligent men, and you must know that a reasonable doubt is a reasonable doubt, and nothing

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else.

It is not a guess, or a speculation, or a pretense, for the purpose of enabling a man to avoid doing what may be an unpleasant duty. It is a reasonable doubt, springing from the evidence in the case, and from no other cause or source.

If you entertain such a reasonable doubt, give the defendant the benefit of it and acquit him. But, if, on the whole case, after fairly and impartially weighing the testimony of each and every witness, you come to the conclusion that the defendant did the act charged against him, and that conclusion is beyond a reasonable doubt, then you are in duty bound to declare your conviction by delivering a verdict pronouncing the defendant guilty of the crime charged against him.

I deem it almost unnecessary, gentlemen, to remind you that, while you sit in that jury box, while you consult as jurors in this case, you are judges of the facts; and, as such judges, you should be unmoved by any emotion of sympathy or prejudice, either for or against the defendant; and that you should simply deal with the evidence before you in a cold, unimpassioned way, and, whatever the conviction be that has been produced in your mind by that evidence, you owe it, not only to your



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own selves, to your own consciences, but to the solemn duty imposed upon you by the obligation resting on you as jurors, to declare, by your verdict, what your conviction is.

The requests to charge handed up by the defendant I decline to charge in the language requested; and for the further reason that I have substantially charged the requests in my main charge.

Gentlemen, I submit this case to your consideration. Your verdict will be either guilty or not guilty.

You may retire.

(The jury retired at 12 o'clock, noon.)

(The jury returned to the Court room at 1:20 P. M.)

THE COURT: Gentlemen, I have received a communication from you, in which you state as follows:

"Kindly let us have the evidence relative to the identification in the Police Court." I have caused the stenographer to carefully examine the transcript of his minutes, and he will now read to you from that transcript such evidence as has been given upon that question. Read, Mr. Stenographer.

(The stenographer then read as follows, from

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the cross examination of Thomas F. Phelan):

"BY MR. GREENTHAL:

Q And you were in this Police Court? A Yes, sir.

Q And you went to this pen, with the other officers in the case; did you not? A Yes, sir, on the following day.

Q For the purpose of identifying your prisoner?

A No, sir.

Q Did you go there with Officer Fitzsimmons?

A Yes, sir.

Q And Officer McCutcheon? A Yes, sir.

Q Did you, then and there, have a dispute with Fitzsimmons and McCutcheon as to who your prisoner was?

A No, sir.

Q You did not? A No, sir; positively not."

The stenographer, also, read from the cross examination of Norman J. Fitzsimmons, as follows:

"Q Now, we will get down to the day before the examination? A Oh, I was down to the pen to bring the prisoner up.

Q Yes. You were down there with Officer Phelan?

A To bring the prisoner up.

Q (Question repeated). A I don't remember; I don't think so. I think I was alone.

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Q Did you, at that time, have a dispute with Officer .Phelan, or any other officer, as to who was your prisoner? A No, sir.

Q Did you have any difficulty in identifying the defendant and a person named Lawrence? A No, sir.

Q Do you know a person by the name of Lawrence?
A Yes, sir.

Q Was he in the pen at the time? A Yes, sir."

THE COURT: Have you read all the testimony on that point, Mr. Stenographer?

THE STENOGRAPHER: Yes, sir.

THE COURT: That being all the testimony on that point, gentlemen, you may retire.

(The jury returned to the Court room at 1:30 P2 M., saying that they found the defendant Guilty of Sodomy.)

THE COURT: I will remand the defendant until Friday morning.

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THE DEFENDANT'S REQUESTS TO CHARGE.

1. I ask your Honor to charge the jury that, no matter how conclusive the testimony may appear to be, the character of the accused may be such as to create a doubt in the minds of the jury, and lead them to believe, in view of the improbabilities that such a person, of such character, would not be guilty of the offense charged, that the other evidence in the case is false, or the witnesses mistaken. (People v. Remsen, 43 N. Y. 6)

2. I ask your Honor to charge the jury that evidence of good character may in and of itself raise a reasonable doubt, which would warrant a jury in acquitting a defendant, no matter how strong the evidence against him may be. (Peo. v. Feldner; Golding; 20 App. Div. 444).

3. Evidence of good character is not only of value in doubtful cases and in prosecution of minor offenses, but is entitled to be considered when the crime charged is atrocious and also when the testimony tends very strongly to establish the guilt of the accused. It will sometimes, of itself, create a doubt, when, without it, none would exist.

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