

**START**

1710

**CASE**

**CASE #1710**

I N D E X.

Witness.	Direct	Cross	Re-D	re-C.
MICHAEL MURPHY,	1	4	15	
JOSEPH F. CHRISTIE,	16	17		
JOHN BUDEROVITCH,	19	20	26	26
STANLEY HORMAN,	28	30		
WILLIAM HORMAN,	32	34	38	

CASE #1710

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

1937

THE PEOPLE OF THE STATE OF NEW YORK,

Before:

-against-

HON. JOSEPH F. MULQUEEN, J.,

WILLIAM HORMAN.

Judge and a Jury.

New York, May 6th, 1913.

Indicted for violation of liquor tax law.

Indictment filed September 25th, 1912.

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

For People: ASSISTANT DISTRICT ATTORNEY COLLIGAN.

For Defendant: ELIAS ROSENTHAL, ESQ.

A jury is duly impaneled and sworn.

M I C H A E L W. M U R P H Y (Central Office Squad) called  
as a witness in behalf of the People, being duly sworn, testi-  
fies as follows:

DIRECT EXAMINATION BY MR. COLLIGAN:

Q On the 2nd day of May, 1912, did you visit the premises  
No. 3 Washington street? A I did.

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

IT IS CONCEDED that the defendant is the proprietor  
of Liquor Tax License No. 2336; that the defendant had a  
place of business established and running under that  
license, of which he was the holder at 3 Washington street.

Q You visited those premises on the 2nd day of May, 1912?

CASE #1710

A I did.

Q Who accompanied you, if any one? A Officer Joseph  
Christie.

Q The second day of May was not Sunday? A No, sir.

Q What day of the week was it? A It was Thursday morning.

Q What time did you go to these premises? A I entered  
these premises about 1:25.

Q 1:25 in the morning? A Yes, sir, and I left a few  
minutes to 2.

Q Will you describe the premises? On which side of  
Washington street are the premises? A The premises are on the  
east side of Washington street.

Q How many entrances are there to the place? A There is two  
entrances to the place, one through the front door, and one  
through the side door.

Q So that you walk along through an alleyway, through a ---  
a hall-way, through the rear of the saloon.

Q How many rooms were there in the saloon? A There is the  
saloon, and then there is a rear room.

Q When you enter this hallway you reach a door, do you  
not? A Yes, sir.

Q And where does that door open into? A That door opens  
into the rear room.

Q So that the front entrance is effected by going to the  
door on Washington street? A Yes, sir.

Q And the side entrance is effected by going through the

CASE #1710

hallway and then opening a door which leads into the rear room of the saloon? A Yes, sir.

Q Which door did you enter on that night? A I entered through the street door to the hall and then through the hall to the right of the hall, and in through the rear room, through this door which led from the hall to the rear room.

Q Did you find the door open? A There was a man at the door and when I knocked at the door he opened it.

Q How were you dressed? A I was dressed in the garb of a longshoreman.

Q And you were accompanied by another officer; who was he? A Officer Christie.

Q What did you do and what did you say when you entered? A Well, when I entered this room there was about eight women and about ten men in there.

Q Which room were the women and the men in? A They were all together in the rear room where the drink was sold.

MR. ROSENTHAL: I move to strike that out.

MR. COLLIGAN: Consented to strike out the last words "where the drink was sold."

Q What did you do when you went in? A We entered the premises and the bartender, John Buderovitch came to us and asked us what we were going to have to drink, and I called for two glasses of lager beer, which he then went out to the barroom and returned with the lager beer and I paid him the sum of ten cents for that. Then after drinking that beer and having our

3  
O  
I  
I  
O  
C  
A  
S  
E  
#  
1  
7  
1  
0

empty glasses in our hand, Mr. Horman, the defendant, who was there at the time --- all the time from the time we entered--- he said to the bartender to see what they want, and the bartender came to us the second time and asked us what we were going to have and I called for two glasses of lager beer, and he then went out the same way again to the barroom and returned with the lager beer, and I paid him the sum of ten cents for that, and we then drank the beer and left the place, and a few days after ---

Q How many people were in that room at the time? A Well, there were about twenty people.

Q How many women were there? A Eight or ten women.

Q What were they doing? A They were drinking at the tables. There were two women there asleep on the tables.

Q And you say that the defendant asked you what you wanted? A No, the defendant did not ask me.

Q Did he give orders to the waiter, or did he not? A He gave orders to the waiter.

Q And what did he say if anything, and what did he do? A He said to the waiter, "see what they want."

Q How many drinks of beer were you served? A I was served with two glasses of lager beer and Christie was served with two more.

**CROSS EXAMINATION BY MR. ROSENTHAL:**

Q How often had you been in that place before this evening?

A I have. I have been getting evidence. I was getting

CASE #1710

evidence against that place for a week previous.

Q How many times have you been in that place? A I have been in that place about four times.

Q Drank every time you were there? A No, once I did not.

Q Once you did not? A No, that was in the day time, I was in the rear room.

Q You were there in unprohibited hours as well? A I was.

Q You were drinking then? A Oh, I drank then, yes.

Q You did not look for evidence, did you, that time?

A Yes, I was.

Q Even then you looked for evidence of violation of the excise law? A No; evidence of a disorderly house.

Q Oh, you looked for evidence of a disorderly house? A Yes.

Q Any other place in Washington street, where you looked for such a house? A No. I was sent there on a complaint from Headquarters.

Q You were sent there from Headquarters, weren't you? A I was.

Q And you were told to get evidence against this defendant? A If he was violating the law, yes.

Q You were told to get evidence against this defendant? A Not against him particular --- anybody that was violating the law there.

Q Didn't they mention 3 Washington street, where he was located? A No. 3 Washington street, yes.

CASE #1710

Q They mentioned that to you at Headquarters? And with such instructions from Headquarters you proceeded to 3 Washington street and had several drinks in non-prohibited hours first, is that right? A No, the first time I was there I had it during prohibited hours.

BY THE COURT:

Q What do you mean by prohibited hours? A That is between 1 and 6 o'clock in the morning on week days.

BY MR. ROSENTHAL:

Q The first time you went there was between 1 and 6 o'clock in the morning, is that right? A Yes, I drank there between 1 and 6 o'clock.

Q What date was that? A That was on April 27th.

Q And you know that it takes three charges against a saloon keeper or a holder of a liquor tax license in order to take his license away from him, don't you?

MR. COLLIGAN: I object to that question.

Objection sustained. Exception.

THE COURT: We are not concerned with the effect of the law but ---

MR. ROSENTHAL: I want to show the motive of making these three arrests.

THE COURT: He has not made three, he has made one.

MR. ROSENTHAL: Yes, we will show that.

THE COURT: The defendant is only here on trial for one offense. If you want to show malice or anything

CASE #1710

of that kind ---

MR. ROSENTHAL: Yes, that is the idea.

Q You know you made three charges against this defendant?

THE COURT: It is not a charge that affects the defendant.

MR. ROSENTHAL: But three charges must be brought in order to break his license.

THE COURT: No, two convictions, not one.

MR. ROSENTHAL: Well, of course.

THE COURT: A charge does not hurt him unless it is made good by evidence in the proper court.

MR. ROSENTHAL: That is understood, that upon two charges there could not be three convictions. They are attempting to get three convictions against this man.

THE COURT: The jury will disregard all that. There is only one charge before the jury now, and the effect of a conviction must not be considered by them at all. The question is one of fact and law.

BY MR. ROSENTHAL:

Q How many charges did you make against this defendant?

Objected to. Objection overruled.

A Only one.

Q You preferred only one? A Against him, yes.

Q How many against his bartender? A Two.

Q That is three. The first one you say you charged him with a violation of law, was the 27th of April --- is that right?

A It was, yes.

CASE #1710

A It was, yes.

Q How long have you been connected with the Central Office of the Police department? A I have been connected with the Police department for close onto ---

Q The Central Office? A A Year.

Q Still connected with that office? A I am.

Q You know that if a defendant violates the law in the presence of an officer that you have the right to cause his arrest, don't you? A Our orders is to get a warrant.

Q Do you know that to be the law? Never mind about the warrant.

BY THE COURT:

Q Do you know it or not? A No.

Q You don't know that to be the law? A No.

Q You take your orders from your superior? A Yes, sir.

BY MR. ROSENTHAL:

Q How long have you been a police officer? A Eight years.

Q And you mean to tell this Court and this jury that if you see a liquor dealer commit a misdemeanor or a felony that you cannot arrest him without a warrant from Police Headquarters?

Objected to. Objection overruled.

A Not at the present time.

Q When did you first make a charge against this defendant of the alleged violation of April 27th? A I got warrants.

Q When? A Oh, that was around ---

Q May 9th? A May 9th the arrest was made.

CASE #1710

Q Well, when did you get the warrant? A The warrant was  
got a day or two previous.

Q Well, May 8th? A Possibly about May 8th.

Q In other words, for a period of twelve days you did not  
make an attempt to obtain a warrant against this defendant for  
the violation of the excise law, after the commission of the  
alleged crime --- is that right?

Objected to as immaterial. Objection overruled.

A I did not.

Q Now, then you say he violated the law on the 2nd of May  
again? A Not again. That is the first time I saw him violate  
the law, was the 2nd of May, this defendant, but his bartender  
did.

Q The 2nd was the bartender? A Yes.

Q This defendant you saw on the 2nd of May, and with a  
warrant you waited until the 12th of May, did you not? A That  
was the same day.

Q And then you preferred how many charges on the 12th of  
May, or the 9th of May, against the defendant and the bartender?

A Three.

Q Were you present here when he was tried on one of those  
charges the other day?

Objected to. Objection sustained. Exception.

THE COURT: Unless you wish to show this defendant  
gave contradictory evidence on some other occasions, I  
will allow it.

CASE #1710

10

MR. ROSENTHAL: I want to ask him whether he was not here when the case was called for trial.

MR. COLLIGAN: Did you testify in the case before?

THE WITNESS: I did not.

MR. ROSENTHAL: It is not contended that he did testify.

Q Were you here when the Court directed an acquittal of the defendant?

MR. COLLIGAN: Objected to.

THE COURT: I have sustained that objection. You must not continue that line of examination.

MR. ROSENTHAL: I want to show this gentleman to be biassed against this defendant.

THE COURT: Well, that is not the way to show it. I will instruct the jury to disregard those questions of counsel, they are in defiance of the ruling of the court, which disallowed what was done by any other court or jury. You are sworn to take the law from the court and to decide whether it is proved to your satisfaction whether or not the defendant violated the law, and no matter what was the result of any other charge, which has not any connection with this case.

BY MR. ROSENTHAL:

Q Did you see any one in the barroom of those premises?

A I did not.

Q Not a soul? A No.

THE COURT: On which occasion do you mean now?

CASE #1710

0111

MR. ROSENTHAL: On the 2nd of May, that is the only thing I am trying here.

Q Did you on the 2nd of May see any one in the barroom?

A I did not.

Q You only saw some men and women sitting in the room?

A I saw them sitting there, but I saw the bartender going to the barroom, and to the bar.

Q Is it a closed door? A No, he opened the door and the door slammed after him.

Q Is it a swinging door? A It is a door that you open like that door over there (indicating door in court room).

Q You are sure about that, that it is a swinging door?

A sure.

THE COURT: He says that it is a door that you open like that door over there. Why not pay attention to the question, Officer?

BY THE COURT:

Q What do you mean by a swinging door? A Well, that door swings over there.

Q It is a door on hinges? A Yes, sir.

Q It is a full sized door? A Yes, sir.

Q And did you mean that you saw him through the door, or that you saw him walking in through the door? A I saw him walking through the door.

Q But you could not look through the door? A No, sir, you could not.

CASE #1710

BY MR. ROSENTHAL:

Q So when he went into the barroom you did not see what he was doing there? A Not after the door shut after him.

BY THE COURT:

Q Like which door over there did you say it was? A It is like one of those doors (indicating doors in court room).

Q An ordinary door? A Yes, sir.

BY MR. ROSENTHAL:

Q When did you get to that place on the 2nd of May? A When did I get in?

Q Yes. A I entered about 1:25.

Q Were you there before? A I was not, on that day.

You were not there at all. Well, do you remember testifying in the Magistrate's Court? A I do.

Q Your memory was better than it is now, was it not?

A About the same.

Q Do you remember this question asked you: "Now, then, isn't it a fact that on the 2nd of May you came to that place at half past ten in the evening," and you said "No". "Q Why did you think so long before you said no? A Well, I have visited there a couple of times and I was not sure." You were not sure in the Magistrate's Court as to the time you were at that place on May 15th, 1912 --- a year ago --- but you are sure to-day that it could not have been 10:30 that you entered the place? A I am sure that I entered on May 2nd at 1:25 and stayed there until 1:55.

CASE #1710

13

Q Do you remember answering those questions I read to you in the Magistrate's court? "Well, I have visited there a couple of times and I was not sure"?

THE COURT: Well, that answer was given in reply to a question as to why he waited so long. You waited so long to make sure to answer correctly, is that it?

THE WITNESS: I did, yes, sir.

MR. ROSENTHAL: I except to your suggestion as to the answer.

THE COURT: You must not attempt to inject into the case any element that is not naturally in it. That question was not whether he is sure he was in the place or not, but why he waited so long. Now, if you are going to resort to questions of that kind I will make perfectly sure that the jury understands the question, and the witness understands it.

MR. ROSENTHAL: I object to your Honor's statement, and these were minutes that were taken by a stenographer.

THE COURT: Yes, and your question is not a fair one in my opinion. Your question there in the court was as to why he waited before he answered a question.

MR. ROSENTHAL: I except to your Honor's statement that my question is not a fair one.

THE COURT: Now, go on. If you are going to introduce such methods in the case I will take good care to see that the witness understands the question, and the jury understands it. If you can

CASE # 1710

14  
show that in any other court or any other place he made a different statement than now you may show it.

MR. ROSENTHAL: That is what I want to do.

THE COURT: You asked him why he waited so long before he answered the question.

MR. ROSENTHAL: I read that to him; that is the way the record reads.

MR. COLLIGAN: I think the second juror misunderstands now.

BY THE COURT:

Q Did you say you were not in there on the second of May, in the Magistrate's court? A No, sir.

Q The question asked in the Magistrate's court, as I understand it, was why you waited so long to answer? A Yes, sir.

Q And that you wanted to be sure of your answer before you made it? A Yes, sir.

Q You think before you answer, don't you? A Yes, sir.

Q It is your custom to wait to understand a question before you answer it? A Yes, sir.

Q That is what you meant, was it? A Yes, sir.

BY MR. ROSENTHAL:

Q Who was there besides this defendant, so far as the occupants of the place are concerned?

THE COURT: Where and when?

Q Who was at the premises in question? A Besides the men and women in the place there was the defendant and John Buderovitch, the bartender.

CASE #1710

Q And who else? A Those were the only two outside of  
Officer Christie who was with me. 15

Q The only two that you knew. You say there were some  
other men and women there?

THE COURT: He has repeated that over and over again,  
and he has just said it. Now, please do not repeat the same  
thing over and over again, Counsel.

MR. ROSENTHAL: Now, your Honor ---

THE COURT: It is my duty to keep the cross examination  
within proper bounds.

MR. ROSENTHAL: I am through.

RE-DIRECT EXAMINATION BY MR. COLLIGAN:

Q When the drinks were served to you, where were they  
brought from? A Brought from the barroom.

(The witness now leaves the stand.)

THE COURT: Recall the Officer. If you want to in-  
troduce those minutes in evidence I will let them go in.  
If you claim there is any contradiction in the evidence I  
will let those minutes go in.

MR. ROSENTHAL: No, I will not offer them. I simply  
offered such questions as I wanted.

THE COURT: Well, offer the questions you wish.

MR. ROSENTHAL: I have.

THE COURT: All right.

CASE #1710

J O S E P H, F. C H R I S T I E (Central Office Squad)  
called as a witness in behalf of the People, being first duly  
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. COLLIGAN:

Q Are you a member of the municipal Police Office at-  
tached to the Central Office Squad? A Yes, sir.

Q And were also on the 2nd of May, 1912? A Yes, sir.

Q Did you visit the premises 3 Washington street on that  
day? A I did.

Q Were you accompanied by the last witness? A Officer  
Murphy.

Q What time did you go there? A 1:25 a. m.

Q How long did you remain there? A Remained there until  
1:55.

Q What did you do when you entered the premises? A Went  
in through a hall door on Washington street, which led to a door  
inside. Officer Murphy knocked at the door, and some one  
looked out and admitted us.

Q How were you dressed? A Cap and black shirt, old  
clothes -- make-up.

Q What did you see when you first entered? A About eight  
women, and about eight or nine or probably ten men sitting  
around a table speaking, and I seen two women lying on the  
floor in the corner.

Q What did you do when you went in there? A The bartender  
came over to us and asked what would we have, and Officer Murphy

01110

CASE # 1710

17

asked for two glasses of lager beer and paid ten cents, and paid the bartender ten cents, and the defendant Horman was standing at the doorway leading into the barroom, and we drank our beer, stood there with the two empty glasses, and he said to the bartender, called to us, "See what they want". He came over, asked us what we would have, and Officer Murphy asked him for two glasses of lager again, for which he paid him ten cents.

Q You were served with the beer and you drank it.

Q You stayed there till 1:55 a. m.? A Yes, sir.

CROSS EXAMINATION BY MR. ROSENTHAL:

Q Did you look at your watch at the time you went in that place? A Yes, sir.

Q When did you look at your watch? A Before we were into the hallway.

Q Who was it that looked at the watch --- you or Officer Murphy? A I did.

Q And I suppose you looked at the watch when you went out of the place? A The two of us looked at it.

Q Did you talk this over with Officer Murphy as to what happened at the time, before you testified here to-day?

A No, sir, a little conversation about it.

Q Never a word about it? A Oh, yes, we had words about it, surely.

Q Officer Murphy didn't say anything about two women on

CASE #1710

18  
the floor but said two women fell asleep on the table; who is  
right? A In fact, all of the six that were at the table were  
asleep, and two was on the floor also.

Q Officer Murphy said nothing about any two women being  
upon the floor; which of you two is right? A I seen two  
women lying on the floor.

Q And you are sure it was 1:25 when you came to the place?

A 1:25.

Q How many times had you been there prior to that  
evening? A Three times. Twice in the evening and once in  
the afternoon.

Q Had drinks there every time you went in? A Not in the  
afternoon, we didn't have any drinks.

Q In the afternoon you had nothing? A Nothing.

Q Isn't it a fact that you and Officer Murphy came in  
there and drank for about three weeks previous to this 27th  
day of April? A No, sir.

Q You say you put on a cap and a black shirt --- is that  
in order to disguise the fact that you are an officer? A That  
is the only way we could gain admittance.

Q But you had been there before and so had Mr. Murphy,  
the other officer, according to his testimony? A We were  
there before the 2nd of May, yes, sir.

Q So there was not any necessity of masking yourselves  
for the purpose of gaining admission? A There certainly was.

Q In spite of the fact they had seen you there three or  
four times before? A Yes, sir.

CASE #1710

MR. COLLIGAN: People rest.

Mr. Rosenthal now opens to the jury in behalf of the defendant.

JOHN BUDEROVITCH (137 Washington street) called as a witness in behalf of the defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

BY THE COURT:

Q How long have you been in this country? A Ten years.

BY MR. ROSENTHAL:

Q Were you the bartender of the place of business of this defendant on the 1st day of May, 1912? A Yes, sir.

Q You remember the two officers, Mr. Murphy and Mr. Christie? A Yes, sir.

Q Being there that day? A Yes, sir.

Q What time of the evening was it when these officers came to the place? A The evening between ten and eleven.

Q And what time did they leave the place? A Leave about after eleven; it was, I guess, between eleven and twelve.

Q What time do you close up? A About quarter to one.

Q Now, then, how many times had those officers been in that place before the 1st of May? A They were around for two weeks.

Q How often, how many times? A I don't know; it was about ten or fifteen times.

CASE #1710

20  
Q And you knew their faces very well, did you? A Yes, sir.

Q When they came into your saloon during these fifteen times what did they do there? A They drink big schooners of beer.

Q And when you closed the place on the 1st day of May, 1912, at a quarter to one, did you close all of the doors in the place? A Yes, sir.

Q With the keys? A Yes, sir.

Q Was Horman there at the time that the officers were there? A Yes, he was. Horman was himself behind the door and we played cards, pinochle.

Q Was Horman's son there at that time? A Yes, sir.

Q Who else was there at that time? A Some fellow coming from Boston.

Q What is his name? A Frank, I guess.

CROSS EXAMINATION BY MR. COLLIGAN:

Q How long did you work in the place? A I worked one year.

Q How many times had these two officers been in there before the first day of May, 1912? A About ten or fifteen times --- I can't tell for sure.

Q How were they dressed when they came in? A He had some kind of blue shirt, and the suit was very poor --- I can't tell you what kind of suit he had, I can't remember that, but I know he had a shirt, blue on.

Q I don't hear you. A I know he had the same kind of

CASE #1710

0115

shirt, blue.

Q Who had the blue shirt on? A Officers.

Q Which one? A Both of them.

Q What kind of hats did they have on? A Caps.

Q And for ten or fifteen times had come in and drank what you call schooners of beer? A Yes, sir.

Q Do you want the jury to understand they were there for an hour or an hour and a half each time? A Yes, sir.

Q How many beers did they have ordinarily? A Five or six.

Q Ten or fifteen times? A Yes.

Q Did you see them on the morning of May 2nd? A No.

Q What day of the week was that? A I can't tell you.

Q Did you see them on the morning of the 30th of April?

MR. ROSENTHAL: I object, if you ask about any other time except between one and six o'clock. You cannot try a man under an indictment on any circumstances ---

THE COURT: What time do you mean now, Mr. Colligan? I will sustain the objection so far as it appears that the question is indefinite. If you will name the hour ---

Q If you saw a man on the 30th of April, I mean, any time on the 30th of April?

MR. ROSENTHAL: Objected to. No charge as to the 30th of April.

THE COURT: Question allowed, as cross examination.  
A I don't remember.

Q Could you say whether or not you saw them on the 29th

CASE #1710

of April? A On the 29th I come up to work.

Q How long were you working in that place? A One year. On the 26th I was home, and I stayed four days and I came back on the 29th.

Q How long had you been working before the 26th of April, 1912? A I was working a year before.

Q Let us get down to the 2nd day of May, 1912.

Q Do you know what day of the week that was? A I don't know, I don't remember.

Q Were you working on that day? A Yes, sir.

Q What time did you go to work? A In the evening at 2 o'clock.

Q At 2 o'clock in the afternoon? A Yes.

Q What time did you close up? A Quarter to 1.

Q Who was in the place of business when you closed up?  
A Frank was in that place.

Q Who is Frank? What did he do there? A He come from Boston. He come up and asked if we have got a room to sleep in.

Q What was Frank's business? A He come from Boston.

Q Have you seen Frank since? A Yes, he is here now.

Q And he come up from Boston on that day, did he? A Yes.

Q He just arrived on that day? A On the first of May he come up.

Q And he asked for a place to sleep in the barroom? A Yes.

MR. ROSENTHAL: Not in the barroom.

CASE #1710

23  
Q Where did he ask to sleep? A Upstairs on the first floor, in a room.

BY THE COURT:

Q You have rooms upstairs, have you? A Yes.

Q What business is Frank in? A I don't know Frank --- his business.

Q Well, you don't know, is that it? A I don't know him; just I know he came from Boston that time. I asked him where he came from, and he said "I come from Boston.

Q What is Frank's business, do you know or not? A I don't know.

BY MR. COLLIGAN:

Q How do you know it was quarter to one when you closed up on that day? A Because I have to know what time closes up.

BY THE COURT:

Q How do you know it was quarter to one when you closed up? A Because I seen the clock.

BY MR. COLLIGAN:

Q Is there a clock in the barroom? A Yes, sir.

Q Don't you know that you can keep that place open until 1 o'clock? A But nobody was in it.

Q Nobody was in there? A Just one, that Frank man, that's all.

Q What time do you ordinarily close the place up when there is not anybody in there? A Well, about one o'clock.

Q But on this particular occasion you closed it up at

CASE #1710

quarter to one? A Yes, sir.

Q Didn't you see those two officers in there? A I see them before, but not that time.

Q Didn't you see them in there after one o'clock?

A No, sir.

Q Didn't you serve them yourself? A No, sir.

Q Didn't you see eight or nine women in there? A No, sir.

Q Now, don't you know that those same women were arrested on that same day and sent to court ---

MR. ROSENTHAL: Objected to.

A No, sir.

MR. COLLIGAN: Let me ask the question.

Q Don't you know as a matter of fact that seven or eight of these women were arrested on that same day for being in there on the second day of May --- for being in there and convicted of vagrancy?

MR. ROSENTHAL: Objected to. First, it is not a fact ---

Q Between one o'clock and 6 o'clock in the morning?

THE COURT: Question allowed.

MR. ROSENTHAL: Objected to. It is not a fact; secondly, it is incompetent, immaterial and irrelevant.

Objection overruled. Exception.

MR. COLLIGAN: Question withdrawn as to the date.

It was on another day.

THE COURT: Then I will sustain the objection.

CASE #1710

I allowed the question merely on cross examination as to the time he closed up the house. If they could show that some one was arrested on the premises after that time it would be a material contradiction.

MR. COLLIGAN: Now I will ask it in another way.

Q Don't you know as a matter of fact that they were arrested on the 9th of the month for being in the premises on the 2nd of the month?

MR. ROSENTHAL: Objected to on the ground that there is no record of it, and this is assuming a state of facts not proven.

THE COURT: Objection sustained. That is merely a charge.

Q Don't you know that they were convicted?

MR. ROSENTHAL: Objected to; you are proving it before a jury. I object to it.

Q Don't you know that they were convicted of vagrancy for being in that place of business after one o'clock on the morning of the 2nd day of May, 1912?

MR. ROSENTHAL: Objected to on the ground that it is not the best evidence, and as incompetent, immaterial and irrelevant, and prejudicing the jury against this defendant.

THE COURT: Objection sustained.

Q Don't you know that those women were in there on the 2nd day of May after one o'clock in the morning? A No, sir.

CASE #1710

Q Didn't you see a lot of women lying around on the floor in that place drunk on the 2nd day of May after one o'clock in the morning? A No, sir.

RE-DIRECT EXAMINATION BY MR. ROSENTHAL:

Q You are the man that closed the place at quarter to one?

A Yes, sir.

Q When you closed the place you closed the barroom and the rear room, and every room there? A Yes, sir, I closed everything.

Q You are not working for this defendant any more, are you? A No.

Q And you have not been working since when --- how long?

A I can't tell you -- October, I guess.

Q Since October you did not work for him? A No, sir.

BY THE COURT:

Q What is your business now? A Bartender.

Q In some other place? A Yes, sir.

BY MR. ROSENTHAL:

Q When these officers came there did you know that they were officers when they first came the second time? A Yes, I know.

Q How did you know they were officers? A Because he showed the badge.

RE-CROSS EXAMINATION BY MR. COLLIGAN:

Q What time did they show you their badges? What day and what hour of the day? A I can't tell you what day.

CASE #1710

Q How do you know how to answer your counsel, then? A  
Because they come up, the fellows and they have a drink, and  
they say "We are officers".

Q When did they show you their badges? A I don't re-  
member, I can't tell you.

Q They did not arrest you at the time? A No.

Q And you want the jury to understand that on some day---  
you don't know the date, but on some day these officers  
voluntarily walked in and showed you their badges? A I don't  
know the date.

BY MR. ROSENTHAL:

Q They showed you their badges before you were arrested,  
didn't they? A Sure.

BY THE COURT:

Q Were you ever arrested? A Yes.

Q What do you mean by arrest? A Arrested on May 9th.

Q You mean they showed you their badges on May 9th, is  
that it? A Oh, no, they showed me before that.

Q Well, when before that? A I cannot tell you exactly  
when.

BY MR. COLLIGAN:

Q Was it the night of May 2nd when they come in, and had  
this beer in the evening, as you say?

(Question withdrawn.)

Q You have told us that they came in there on May 1st,  
at half past ten in the evening --- do you remember that?

A Yes, sir.

CASE # 1710

Q The two officers? A Yes, sir.

Q Did they show you a badge then? A Before that they showed me a badge.

Q How many days before? A About three or four days.

Q What did they say to you when they showed you their badges? A They said "We are officers".

Q They simply said "We are officers"? A Yes, sir.

Q Is that all they said? A Yes, sir.

Q Did you say anything to them then? A No.

BY MR. ROSENTHAL:

Q That is during the time they came in drinking beer in your place? A Yes, sir.

STANLEY HORMAN (12 Delancey street) called as a witness in behalf of the defendant being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q Do you know officers Christie and Murphy? A Yes, sir.

Q You are the son of this defendant, are you not? A Yes.

Q And you are one of those that was arrested with the others? A On what day?

Q That is what I am asking you, on what day? A On May 16th I was arrested.

Q And you were taken to a station house? A Yes, sir.

Q And you were discharged next morning? A Yes, sir.

MR. COLLIGAN: I object to that.

THE COURT: That is immaterial, if he had been

CASE #1710

arrested.

MR. ROSENTHAL: I just want to show the bias on behalf of the officers in taking everybody that was there, whether they succeeded or not.

THE COURT: He has a remedy if he claims the officers arrested him improperly and illegally; let him sue them. But that is not material here.

Q Will you tell us if you remained till they closed the place that night? A No, sir, I was not.

Q How late were you there? A To what day are you referring?

Q On the 1st day of May? A Till quarter to 12.

Q What time did you get there? A I got there about eight o'clock.

Q Did you see your father there? A Yes, sir.

THE COURT: What day are you speaking of now?

MR. ROSENTHAL: May 1st.

Q You are doing what? A Working in an employment office, 11-1/2 Washington street.

Q That is about six doors away? A About five doors away from the saloon.

Q When you got there at eight o'clock in the evening your father was there, was he? A Yes, sir.

Q What time in the evening did you see those officers if at all? A Between ten and eleven.

Q And they came in together? A Yes, sir.

Q How did they come in? A They came in through the

CASE #1710

front way and went right up to the door, and they started to drink.

Q The front door, Washington street? A I think so, I ain't sure.

Q They went up to the bar, you say? A Yes, sir.

Q And drank beer? A Yes, sir.

Q And how long did they stay there, the first day of May, while you were present? A Well, about half an hour.

Q And then what did they do? A They walked right out.

Q About what time after eleven was it, if you know?

A Before eleven o'clock they went out.

Q They went out before eleven o'clock? A Yes, sir.

Q And you and your father remained until quarter to twelve?

A Quarter to twelve.

Q And they did not return during that time, or during that evening while you were there? A No, sir.

Q Did you ever see them at any other time in the saloon?

A No, sir.

CROSS EXAMINATION BY MR. COLLIGAN:

Q What day of the week was the first day of May?

A Well, I don't remember that.

Q How many times have you been in the barroom in the evening? A Pretty nearly every day.

Q What time do you ordinarily close up? What is the usual closing hour? A Well, I don't work in the saloon, that I don't know.

CASE #1710

Q Well, you say you have been there every day? A Well, I don't wait till the closing hours.

Q But on this particular night in question you did wait till the closing hour? A No, sir.

Q I thought you were there when they closed up? A No, sir.

Q What time did you leave? A I left there at a quarter to twelve.

Q You were not there at one o'clock? A No, sir.

Q You were not there at 1:25? A No, sir.

Q And you were not there at 1:55? A No, sir.

Q So far as the 2nd oday of May is concerned you know nothing about the premises? A No, sir.

BY MR. ROSENTHAL:

Q But at a quarter after eleven that evening you left the premises? A Yes, sir.

BY MR. COLLIGAN:

Q Did you see the officers come in about half past ten in the evening? A About that time --- between ten and eleven.

Q How many people were in there at the time on May 1st, about half past ten p. m. --- how many people were in the barroom, approximately? A I don't remember that. That is about a year ago.

Q Well, you remember everything else, don't you?

A Yes, sir.

Q Can't you recollect whether these two men were there, or were there other people? A There were other people in the

CASE #1710

barroom while these two were there.

Q And these two officers stood at the bar and drank beer for a half hour? A Yes, sir.

Q Did they have any conversation with you? A No, sir.

Q Did they have any conversation with the bartender? A Not that I know of.

Q Any conversation with your father, so far as you know? A No, sir.

Q Simply stood there and drank beer for a half an hour? A Yes, sir.

Q When did you ever see them before? A I never saw them before that.

W I L L I A M H O R M A N (12 Delancey street) the defendant herein, called in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ROSENTHAL:

Q You are the proprietor of the saloon in question at No. 3 Washington street? A Yes, sir.

Q How long have you been the proprietor of that saloon? A About thirteen years.

Q Do you know these two officers, Christie and Murphy? A Yes, sir.

Q How long before the arrest had you known them? A Before the arrest I think they be around in my place for pretty nearly three weeks.

Q What did they do when they came around? A Always drinking.

CASE #1710

RECORDED

1110

Q Were you there on the 1st day of May, 1912? A Yes, sir.

Q Up to what time? A To a quarter to twelve.

Q And then you went home with your son, as he testified?

A Yes, sir.

Q And what time, if at all were the officers in the saloon that evening? A They come after ten o'clock.

Q And what time did they leave? A Exactly I could not remember.

Q I don't want you to say exactly. A Maybe eleven or maybe after eleven.

Q Did they leave before you left? A Oh, yes, before.

Q And you left at quarter to twelve? A Yes.

Q While they were there, were they in the barroom? A Yes, sir.

Q What were they doing? A They drink about three schooners apiece.

Q Did you know that they were officers before the arrest was made? A Yes, sir, I did.

Q How long before did you know that they were officers?

A Before I think over two weeks.

Q Two weeks before? A Yes, sir.

Q And how did you know that they were officers? A He told me like a friend, he treated me and I treated back, and say, "Me looking in the park for the pickpockets." He said, "There is a lot of pickpockets in the Battery Park." I say there was a lot of people get robbed in the park.

CASE #1710

Q You were getting friendly? A Yes, sir, drinking together. He treated me and I treated them.

Q And they told you that they were looking for pickpockets? A Yes, sir.

Q And showed you the badges that they were officers? A Yes, sir.

Q And you knew them weeks before the arrest? A About over two weeks before the arrest.

Q Now, the officers both testified that on the second day of May --- that would be the same day we are talking about only after hours, that you told the bartender to serve them beer, is that true? A No, sir, I never seen them.

Q Were you there at one o'clock that night? A No, I went home at quarter to twelve.

Q On what night? A On that day the first of May, 1912.

CROSS EXAMINATION BY MR. COLLIGAN:

Q What time did you ordinarily close up there? A Well, according to the amount of business; sometimes we close at twelve o'clock at night, if there is nothing to do.

Q What day of the week was the first day of May? Was it a Sunday or Monday or what? A I couldn't tell you, I don't remember that.

Q Who ordinarily takes care of the cash when the day's work is finished? A Oh, whoever has charge of the bar.

Q Where do they put it? A Right with the register.

Q Leave it in the register? A No, they take the money.

CASE #1710

When I don't show up the bartender go and take the money.

Q Where does he put the money? A Well, keeps it in his pocket.

Q Isn't it a fact that you take that money every night when business is through? A Sometimes I don't show up for two or three days.

Q What time did you leave the place of business on the 29th or April? A 29th of April? Well, the 29th of April I think I leave the place about one o'clock.

Q Don't you ordinarily leave the place of business at one o'clock? A Well, if he no have nothing to do, the place is not such a place as is always busy --- sometimes I close at twelve o'clock at night, when there is nothing to do -- there is no use burning gas.

Q How do you know that it was quarter to twelve that you left on the night of the 1st of May, 1912? A Well, I must know the time; when I leave the place I look on the watch; I have got a clock on the wall --- we have got a clock on the wall.

Q Who was in there when you left? A There was John and the Frank --- some fellow come from Boston; and I think one man more. My porter was there.

Q There was just you and the bartender and Frank, the man from Boston and perhaps some other man? A There was my son.

Q That is five people there when you left? A Well, I could not tell exactly. We don't pay attention to that; if I know

CASE #1710

that happens ---

Q Do you mean to tell us that there was not anything in the back room when you left? A No, sir; nobody.

Q Do you mean to tell this jury that there were not any women in there when you left? A No, sir, nobody at all.

Q Don't you know that you were in that place after one o'clock on the morning of May 2nd? A No, sir, no, sir.

Q And didn't you see those two officers come in that back room? A I did on the 1st of May, not on the 2nd. I was home in bed on the 2nd of May, in the morning.

Q And didn't you see eight or nine women lying around in a drunken condition in the back room? A No, sir. Nothing at all.

Q Don't you know that those women were convicted for being there on that day --- convicted for vagrancy?

MR. ROSENTHAL: Objected to on the ground that the Court has already ruled out this question.

THE COURT: I do not see how that is binding. He is the proprietor. I will allow him to answer that question on cross examination.

MR. ROSENTHAL: Exception.

Q Don't you know as a matter of fact, that seven or eight or nine of these women were subsequently convicted of vagrancy for being in your saloon in a drunken condition on the morning of the 2nd day of May 1912? A I never was in the place and never saw no conviction.

CASE #1710

Q Don't you know that these women were convicted of that offense? A No. On the second of May I never was in the place. I never know no arrest was had at all.

Q I am not claiming that the arrest was made on that day, but don't you know as a matter of fact, don't you know that they were convicted for being in your place on the 2nd of May? A On the 2nd of May I never was, I never knew nothing about it.

BY THE COURT:

Q Don't you understand that question? Don't you know that these women were charged with being in your place on that day?

A I don't know what kind of women.

Q You don't know what the charge was against them? A No, I don't know nothing about it. I never was there on the 2nd of May in the place.

Q Didn't you ever see a woman in the place? A Not one woman.

Q You never saw a woman in your place? A Not on the 2nd of May.

Q No, but any day? A Sometimes they stop in and have a glass; I don't know whether they are married or not, but they mostly have the drink.

Q You know a woman from a man when you see her --- you can tell whether a customer is a man or a woman? A But I never sold her. The bartender ---

Q Can you tell a man from a woman by looking at them?

A Well, if I would look always on the man or a woman I can

CASE #1710

tell them, but I never saw ---

Q did you ever see any women in your place? A Sometimes I say they come down, a man with a woman, and have a drink.  
BY MR. COLLIGAN:

Q do you know that some women were convicted on a charge of having been in your place at 2 o'clock on the morning of the 2nd of May? A No, sir.

Q You don't know that? A No, sir.

Q But you won't say that they were not convicted, would you?

Objected to. Objection sustained.

RE-DIRECT EXAMINATION BY MR. ROSENTHAL:

Q The fact is that you left the place at a quarter of twelve? A Yes, sir, I left the place quarter to twelve on the 1st of May.

Q And the officers went before you? A Left before I did, about half an hour.

MR. ROSENTHAL: Defense rests.

MR. COLLIGAN: People rest.

(The Court now declares an adjournment to Wednesday May 7th, 1913, at 10:30 a. m., first duly admonishing the jury in accordance with law. Bail continued.)

CASE #1710

COMMUNIST

THE PEOPLE vs WILLIAM HORMAN.

New York, May 7th, 1913.

TRIAL RESUMED.

Counsel now close to the jury.

The Court now charges the jury as follows:

THE COURT: Gentlemen of the Jury: This defendant has been indicted by the Grand Jury of the crime of violating the liquor tax law. The indictment charges that in the County of New York, on the 2nd of May, 1912, the same not being Sunday, between one and six o'clock in the morning of the said day, in a certain building and premises situated in said Borough and County, known as No. 3 Washington street, the same being in a City having by the last State census a population of fifteen hundred thousand and more, and being a building and premises where the business in trafficking in liquors to be drunk upon the premises were sold, and by virtue of the liquor tax certificate paid for to and prepared issued given and furnished by the special Deputy Commissioner of Excise for the Boroughs of Manhattan and the Bronx, permitted and authorized as provided by the liquor tax law certain liquors, to wit, one gill of wine, one gill of brandy, one gill of rum, one gill of gin, one gill of whiskey, one gill of cordial, one gill of bitters, one gill of ale, one gill of porter, one gill of beer, one gill of lager beer.

CASE #1710

and one gill of a certain strong and spiritous liquor to the grand jury aforesaid unknown, unlawfully did sell, offer and expose for sale to one Michael W. Murphy, and to certain other persons, whose names are to the grand jury aforesaid unknown, and certain other liquors, to wit, one gill of wine, and so forth, and one gill of lager beer, and one gill of a certain strong and spiritous liquor to the grand jury aforesaid unknown, unlawfully did give away to the said Michael W. Murphy and no special liquor tax certificate at the said building or premises during the same hours aforesaid having been previously issued pursuant to the provisions of the liquor tax law against the form of the statute in such case made and provided, and against the peace of the People of the state of New York and their dignity.

You see, Gentlemen, that the indictment is somewhat long. You must understand what an indictment is. It is a charge made by the grand jury against a person, accusing him of a crime. A violation of the penal law is a crime, and a violation of the liquor tax law is made a crime by that law.

The grand jury say that this defendant broke that law, and they are required to cite the details of the charge or the facts on which the charge is based, in writing so that he may know exactly what the charge is against him, and so that you may know what that charge is. And it is therefore necessary for you to keep in mind what the charge is.

CASE #1710

Stripped of all unnecessary verbiage it amounts to the statement that this defendant had a liquor tax license which authorized him to engage in the business of selling liquors on the premises of No. 3 Washington street at certain times and that he had bought and paid for that and that it was properly issued and it was a valid license; that while engaged in conducting business as a liquor dealer in that place on the 2nd of May, 1912, he did sell certain liquors mentioned in the indictment to one Michael W. Murphy. You will notice that there are several items mentioned there. Well, that is the form of indictment which is adopted to cover all cases. If the People prove that he sold any one of these items --- and understand the People must not prove that he sold gin and brandy and whiskey and rum, as stated here --- but if they prove that he sold beer at that time --- and beer is mentioned here, or lager beer --- that is all that is required.

Then it also contains another clause saying that he was unlawfully engaged in business there, without a license. That part of the indictment does not apply to this case.

The charge here is a simple one, then, that this defendant was authorized to do business as a liquor dealer at 3 Washington street, in the Borough of Manhattan and County of New York, and that he did sell certain beer to Michael W.

1710

CASE #1710

Murphy at a time prohibited by law, to wit, between the hours of one and six o'clock in the morning. That is all you have to remember, and the issue here is whether or not he did sell any beer to Officer Murphy and the other officer, at that hour and place unlawfully.

You understand that an indictment is a charge, it is no proof of guilt and when the defendant is brought here before you and you learn what the indictment is, then the function of the indictment ceases. He is not to be convicted simply because he has been arrested and indicted. The law presumes him to be innocent and the burden is on the people, who make the charge, of proving his guilt beyond a reasonable doubt; otherwise he is entitled to an acquittal. That is the old English law which has been adopted by this State.

The action is not between Officer Murphy and the other officer and this defendant, but is between the People of the state of New York and this defendant. And by that term, "The People of the State of New York" is meant organized society, which embraces all the human beings in this state. The People of the State have their own notions of right and wrong; they have the right and the power, and the duty of making laws to protect the general welfare, to regulate the conduct of People to a certain extent; and one of the rights of the People of the state of New York is to say whether liquor shall be sold or not, and in what place or on what premises it

0111  
CASE #1710

shall be sold and the people have exercised that right and passed what is known as the liquor tax law. The defendant is charged with violating Section 30 of that liquor tax law, which is called "other illegal sales and selling". It provides that it shall not be lawful for any person who has not paid a tax as provided in section 8 of this chapter and obtained and posted a liquor tax certificate, as provided in this chapter, to sell or expose for sale, or give away liquors in any quantity of less than five gallons at a time. Nor, without having paid such tax and complied with the provisions of this chapter, to sell, offer or expose for sale or give away liquor in any quantity whatever, any part of which is to be drunk on the premises of such vendor, or any outbuilding, booth, yard or garden appertaining thereto, or connected therewith.

All that I have read so far is in that section but does not apply to this case. Then it proceeds. It shall not be lawful for any person whether having paid such tax or not, to sell, offer or expose for sale, or give away any liquor (a) on Sunday, or before five o'clock in the morning on Monday, or (b) on any other day between one and five o'clock in the morning.

That is all of the statute that it is necessary for you to have now. This law provides, therefore that it shall not be lawful for a man to sell liquor without a license,

CASE #1710

that is, without having paid the tax and received permission of the state in the form of a license; nor, even if he has the license, as it is alleged that this defendant had, to sell, offer or expose for sale or give away any liquor on any day between one o'clock and five o'clock in the morning.

That is the charge here. So there is no doubt about the law; the law is not in dispute. And the charge in the indictment is a very simple one, and that is all that concerns the Court.

It is the duty of the Court, you understand in these matters to instruct you in the law, that is the first thing, and to see that the defendant receives a fair trial. A fair trial means a legal trial, a trial according to law, and he has had that trial.

It is your duty then to take the law without question, to keep in mind the charge in the indictment and then to weigh the evidence and decide whether or not in your opinion the evidence is strong enough or weighty enough or conclusive enough to convince you of his guilt beyond a reasonable doubt.

The charge is a very simple one -- that he sold certain liquor at a certain time and place. And the law forbids that, if he did it. If he did that he is guilty.

You must take the evidence in this case and weigh it as honest men. You understand that jurors in a criminal

CASE #1710

action are called upon to perform the most important work that a citizen is ever called upon to do in a republic in time of peace. You are called upon to decide whether or not the law of the state has been violated by this defendant. It is important that the defendant's rights shall be fully protected; the law intends that they shall be safe-guarded and protected, that you shall not have any prejudice against him; and, on the other hand, the law demands, and you have promised on your oath or affirmation to put aside every question of sympathy, to accept the law without question, and to decide as honest men on your oaths the effect of the evidence on your minds.

You have heard the evidence, you have heard the testimony of the officers, that they were in that place from 1:25, I believe, to 1:55, and that they drank two glasses of beer each there; and then they described other things that they saw in that place, or say they saw in that place.

The defendant says that he was not in that place at that time, that he left at about a quarter of twelve, I think he said, with his son, who corroborated him in that respect, and the bartender; and the bartender said he closed up the place at about a quarter of one. So there is a direct conflict in the evidence.

As I told you, the Court is the judge of the law.

CASE #1710

When the Court tells you the law you must take the law from it; there is no question about the law here. There is no question about the charge, about what the charge means. But you are the judges of the facts. The facts are proved by witnesses. You have heard all the witnesses here, and the law puts on you the great burden of passing on the credibility of witnesses.

What does that mean? There is a direct contradiction in the evidence; both sides cannot be right. Some one, either through intent or through error, honest mistake, has made statements which cannot be true. It is for you to say who told the truth here. That is, you pass on the credibility of witnesses. That word credible means worthy of belief. Who was worthy of belief here?

There are no arbitrary rules that control your judgment in that duty, or to guide you, but you must do as you would in the ordinary affairs of your own life, in the important affairs of your own life. You must weigh the witnesses. Consider what interest, if any, they have in the controversy; whether the officers are eager for promotion, and that that instals in them a motive to commit perjury and secure convictions. Or whether the defendant and his witnesses, fearing a great loss to this defendant, arising from this conviction, have been ready to commit perjury, or whether any or all of them are honestly mistaken as to what they have testified to.

The manner of the witness on the stand, the answers of

CASE #1710

the witness on the direct and cross examination are also to be taken into account by you; and on that point I wish to say something to you.

It is the right of counsel on either side to call attention of a witness to any alleged contradictory statement that he made at any other time. When the officer was on the stand his attention was called to certain statements which it was said he made in the Magistrate's Court. You understand that we are not concerned with what happened in the Magistrate's Court; we are not concerned with what happened in any other court. There was some talk by counsel about dismissals by other courts. You have nothing to do with that. You don't know what facts were there or what condition existed, and you can see for yourselves that it would be unreasonable to guide your action or base your action on what some one else is alleged to have done under conditions that you know nothing about. So that you, as a matter of law are obliged to confine your attention to the evidence given here. You must not go outside the case. But, as I said, counsel on either side may call attention of a witness to any statement which he made any place, whether in court or anywhere else. I want to be specific about this, because there was an apparent conflict between the counsel and the Court on this point. It is not the duty of the Court to say whether these men contra-

CASE #1710

48

dicted themselves in any other place or not; that is your duty. Why I interrupted that cross examination on that line was because it seemed to me, as the questions were read, that counsel was drawing an inference which was not warranted by them, and was taking up time in cross examination which was not based on facts. That I deemed it my duty to call his attention to. Whether those statements, as I told you before, contradicted the statements made here or not I do not assume to say; it is not my duty to form or express any opinion about that, that is your duty.

If you find that any of the witnesses made different statements at any other time, whether the police officer or any of the witnesses, why, you may take that into account in determining the credibility of such witness, and you also may take into account any explanation which he may have given of it.

As I understand it the officer said that he had no doubt about the facts, that he was testifying to, but when he was asked in the police court why he waited so long in giving an answer, he said he wanted to be sure, that is, he wanted to understand the question, he said, and answer that question properly according to the facts as he understood them. That was his explanation, if there was any conflict. You must decide whether there was any conflict or not and whether his explanation did explain that contradiction to you and if there was a contradiction what weight you will give to that contradiction in determining the amount of credibility you

011710  
CASE #1710

will give his testimony here. In other words, therefore, you are to pass on the testimony, you are to decide this case on the evidence given here, and if any witness has made statements elsewhere which contradicted what he said here you must consider that in determining the amount of credibility you will give him here.

So objection was taken by counsel for the defense to questions asked by the District Attorney about certain other matters of convictions of certain other people. You understand that this defendant testified that he went home at twelve o'clock, and his bartender testified that the saloon was closed up at a quarter of one. He was asked whether he did not know that certain other people had been convicted of vagrancy for being on those premises, or who were found on those premises at 2 o'clock on the morning of that day. The fact that the District Attorney asked that question must not be taken by you as proof that that occurred, that any one was arrested there at 2 o'clock in the morning or that any one was convicted. That is not material to this issue. That was merely asked for the purpose of refreshing on cross examination the memory of the witness, or of calling the witness's attention to facts that might lead him to change his opinion. But he said he did not know of any such transaction, as I understand his answer.

I go into those matters so that you may be perfectly fair. A question is not evidence, a question must be taken

CASE #1710

with the answer; the question and answer together may afford evidence; and you must not take into account in deciding this case any other crime. This defendant is charged with one crime here, and that question was merely asked, as I told you, for the purpose of calling to the mind of this defendant some alleged transaction which might lead him to change his opinion or his statement here as to the time when he left the premises, or as to the time when the premises were closed up.

After you weigh all the evidence carefully in that way, every man on the jury will know what impression is produced in his mind, and if your minds are fully convinced that he had a saloon at 3 Washington street or a hotel at 3 Washington street, and that he had a liquor tax <sup>license</sup> for it, that he had a right to sell liquor at certain times, all of which is conceded by the defense, and which are not in question, and that despite the provisions of the law he sold liquor or beer to these detectives at a prohibited hour, at an hour when the law required that his place be closed and that the sale and exposure of his wares should cease --- if you are all satisfied of that, firmly convinced of that to a moral certainty, that is all that the law requires the People to prove; but if for any reason connected with the evidence or lack of evidence in the case you cannot say that your minds

0171

CASE #1710

are fully convinced to a moral certainty, or if you can reconcile the evidence with the innocence of the defendant, why, then your minds are in a state of reasonable doubt and you must acquit him.

The law requires that his guilt be established beyond a reasonable doubt; and, as I told you, reasonable doubt is not based on prejudice against a law, or on sympathy with a defendant; that would not be an honest doubt, that would only be a whim; and the juror who would be influenced by those considerations is false to the oath or obligation which he assumed in becoming a juror. But if his mind, the mind of an honest man seeking to do the right thing, seeking to keep the law in mind and to enforce it and to give a verdict according to the facts -- if such a juror says, "I am not convinced, I cannot say that I am firmly convinced that the defendant is guilty", then your mind is in a state of reasonable doubt and then the defendant is entitled to the benefit of that doubt. So, if the evidence, in your opinion, is equally balanced, you must acquit him. The evidence must be strong enough on the whole case to remove every reasonable doubt. You must not decide it solely on the People's case, you must take in all the evidence on both sides, weigh it carefully and honestly, and then you will know what effect is produced on your mind, and if you are convinced by the evidence weighed in that way, as I said, beyond a reasonable

CASE #1710

doubt that he is guilty, you must say so by a verdict of guilty as charged; and if your minds are not satisfied to that extent, in other words, if you have a reasonable doubt of his guilt, you must render a verdict of not guilty.

MR. ROSENTHAL: I ask your Honor to charge, as a matter of law, that the officers could have arrested the defendant for a violation of the law in their presence, being a misdemeanor or a felony.

THE COURT: Well, that is the law, but the officers say that they were obeying orders, and there is no evidence here that the officers did any unlawful thing. The crime charged is a misdemeanor. An officer, or anybody else in whose presence a misdemeanor is committed may arrest the person or may apply for a warrant. The officers chose to secure a warrant on which they arrested this defendant, as I understand it, on the 9th of March; I believe they so testified. The officers were not obliged to arrest him on the 2nd of May, but they could have arrested him; and their explanation of that is that they were obeying orders. These men are subordinates, and their superiors directed them to proceed in a certain way. That is, there were alternative courses-- either to arrest at once, or, in these particular misdemeanors, to get a warrant and arrest. Whether that regulation is wise or not is not for you to say, and I think it would be unreasonabl

01710

CASE #1710

to expect the officers to violate the rules of their superiors and jeopardize their positions. However, you may take that into account in determining the case.

MR. ROSENTHAL: I ask your Honor to charge that the fact that the officers did not contradict the testimony of the bartender that they exhibited their shields and told him they were officers, is to be taken against them in the absence of contradictory evidence upon that point.

THE COURT: Well, the jurors will determine whether the evidence contradicts them or not, and what effect to give to any of the testimony in the case, including the testimony. But the People were not obliged to recall the officers to testify to evidence which, in the opinion of the District Attorney, if it was his opinion, did not require him to contradict it. They said they went in there, one of them disguised as a longshoreman. You may infer from that that if he exhibited his badge he would not be regarded as a longshoreman.

MR. ROSENTHAL: I except to what that would have shown as your Honor's assumption. I ask your Honor to charge that if the defendant was not present at the time of the sale of liquor, if such sale took place, that they must acquit the defendant.

THE COURT: I so charge, unless it is shown that it was done by his order.

MR. ROSENTHAL: I say in his absence.

01710

CASE # 1710

THE COURT: Well, if the sale was made by his order he is responsible even if he was not present when the other beer was delivered to the officers.

MR. ROSENTHAL: Well, there is no evidence on that, your Honor.

THE COURT: Yes, there is evidence there. The officers both say he was present and that they spoke to him and that he gave the order. Any other requests?

MR. ROSENTHAL: No other requests, your Honor.

MR. COLLIGAN: No requests, your Honor.

The jury now retire to deliberate upon a verdict, and upon their return render a verdict, finding the defendant guilty of the crime as charged in the indictment.

MR. ROSENTHAL: I move to set aside the verdict of the jury as being contrary to the evidence, contrary to the weight of evidence, contrary to the law, and upon all the exceptions and objections taken during the trial of the case, and I ask that your Honor grant the defendant a new trial.

Motion denied. Exception.

Stewart Liddell,  
Official Stenographer.

0178

CASE #1710