

A black and white photograph of a forensic evidence marker. The marker is a white rectangular board with the number '451' handwritten in black ink. It is placed on a surface with a black and white diagonal striped pattern. Above the marker, the word 'START' is printed in large, bold, black capital letters. Below the marker, the word 'CASE' is printed in large, bold, black capital letters. The entire scene is captured in a high-contrast, grainy black and white format.

START

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CASE

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COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York.

Part I.

-----x
THE PEOPLE,

vs.

FRANK DEPOSITO.
-----x

:
Before

:
HON. MARTIN T. McMAHON, J.

:
and a Jury.
-----x

Tried, New York, August 14th, etc., 1904.

Indicted for Sodomy.

Indictment filed August 8, 1905.

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

ASSISTANT DISTRICT ATTORNEY JOHN HENRY ISRLIN, for the People.

JOSEPH H. RADIGAN, ESQ., for the Defense.

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

J O H N R E I L L Y, a witness called on behalf of the
People:

BY THE COURT:

- Q John, how old are you? A Nine years old.
- Q Where do you live? A 67th street.
- Q Have you a father and mother? A Yes, sir.
- Q Do you go to school? A Yes, sir.
- Q Where do you go to school? A 68th street school.
- Q The public school? A Y
- Q And what is your religion, John? Are you a Catholic
or Protestant or what? A Catholic.
- Q Well, do you go to Sunday School? A Yes, sir.
- Q Do you go regularly to Sunday School? Yes, sir.

Q Now, John, do you know why they brought you down here? A Sir?

Q Do you know why they brought you down here to the Court? A Yes, sir.

Q Well, why? A Because that boy took me in the cellar.

Q Yes; because that boy took you into the cellar?

A Yes, sir.

Q Now, do you know what it is to tell a lie?

A Yes, sir.

Q Well, now, suppose that you swear to tell the truth, and then tell a lie, what would happen to you? A I wouldn't go to heaven.

Q You would not go to heaven? A No, sir.

THE COURT: I will allow the boy to be sworn.

(The witness is sworn).

DIRECT EXAMINATION BY MR. ISELIN:

Q Now, John, this is a big room, and you are a little boy, and it is hard to hear you. I wish you would take to this gentleman over here (indicating the 12th juror, and talk as loud as you can? A One day when I was sitting---

Q Now, hold on. Let me ask you a question. Where do you live? A 67th street.

Q Where? A 67th street.

Q And what number? A 313.

Q 313? A Yes, sir.

Q Who do you live there with? A With my father and mother.

Q Have you got any brothers and sisters?

A Yes, sir.

Q How many brothers? A One brother.

Q What is his name? A Hughey.

Q Is he smaller or larger than you are? A Little.

Q How old is he? A Seven years old, going on eight.

Q Have you got any sisters? A No, sir.

Q Now, do you know Frank Deposito? A Yes, sir.

Q How long have you known him? A I don't know.

Q Well, did you know him last winter?

A Yes, sir.

Q Did you know him last summer? A Yes, sir.

Q And before that? A Yes, sir.

Q Do you know where he lives? A Yes, sir.

Q Where? A 321 67th street.

Q West or east? A (No answer).

Q Well, does he live near you?

A Yes, sir.

Q And you live in West 67th street; don't you? A Yes, sir.

Q Now, do you remember seeing Deposito on the 2nd of August? A Yes, sir.

Q Was it in the morning or afternoon? A Afternoon.

Q You had had your dinner?

A Yes, sir.

Q You don't know what time it was; do you? A No, sir.

Q How long had you had your dinner? A A little while after that.

Q And what were you doing when you saw Frank on that afternoon? A I was sitting on the stoop.

Q What? Your stoop? No; on the corner stoop.

Q Do you know the number there? A Yes, sir.

Q What number is it? A 301.

Q 301 West 67th street? A Yes, sir.

Q Were you alone? A Yes, sir.

Q Was Frank alone when you first saw him?

A No, sir.

Q Who was Frank with? A With a whole lot of other boys.

Q And did you have a talk together? Did you say anything to Frank or did he say anything to you? A I said something to him.

Q What did you say to him then? A I said, "Come on up to the corner and sit on the stoop?"

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Q And what did Frank say? A He said, "All right."

Q Did you say anything else to him? A No, sir.

Q Where did you go? A He said, "Come on down in the cellar."

Q Where? A In 321.

Q That is the house where Frank lives; isn't it?

A Yes, sir.

Q And what did you say to that? Did you say anything to Frank then? A No, sir.

Q What did you do? A He--- I walked first and he came right after me.

BY THE COURT:

Q Where did you walk? Down into the cellar? A In the hall.

Q In the hall? A Yes, sir.

BY MR. ISELIN:

Q Were these other boys that you saw with Frank first of all with you when you went into the hall? A No, sir.

Q Just you and Frank? A Yes, sir.

Q Did you stay in the hall or go into the cellar?

A First I stayed in the hall.

Q What did Frank do then, and what did you do, in the hall? A It was boys had pipes and water.

Q Boys had pipes and water? A Yes, sir.

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Q Who had pipes and water? A Some little boys.

Q And what did you do there? A I stood in the hall, watching them.

Q And what did Frank do? A He came right after me, then.

Q And then what did you do? A And he took me down in the cellar.

Q Just you and he? A Yes, sir.

Q He took you down into the cellar? A Yes, sir.

Q Just you and he? A Yes, sir.

Q Now did he say anything to you when he took you down into the cellar? A Yes, sir.

Q What did he say to you when he took you down into the cellar? A He said, "Come on down, and play something bad", and I said, "No; I don't want to go down."

Q And then what did he say? What did Frank say?

A "You have to come down."

Q Frank told you that you had to come down?

A Yes, sir.

Q And did you then say anything to him, right away?

A No, sir.

Q Did you go down with him? A Yes, sir.

Q And you and he went into the cellar? A Yes, sir.

Q Now, what was the next thing that Frank said?

Did he say anything in the cellar? A No, sir.

Q Now, what did he do? A He took down my drawers, and then he pulled out his thing and put in my behind.

Q Then what happened, my son? Go ahead? A And he held his hand up on my mouth, like that (illustrating) and a lady called and he held my mouth again.

Q Then what happened, John? Go ahead? A And then he hid me in some corner, and he said, "See if the lady is outside", and I walked right straight out.

Q And what did you do? A And I told the lady all about what he did.

Q And who was the lady, Johnnie? A Lulu Howard.

MR. ISSELIN: Is Mrs. Lulu Howard in Court?

Stand up, please, Madam.

BY MR. ISSELIN:

Q Is that the lady (indicating)? A Yes, sir.

Q And you told the lady all about what had happened?

A Yes, sir.

Q Now, Johnnie, when Frank had taken down your drawers, did you say anything to him? A No, sir; he held my mouth again (illustrating).

Q He put his hand over your mouth? A Yes, sir.

Q Did you yell while you were down there? A No, sir; he held my mouth.

Q He held your mouth? A Yes, sir.

Q Did you see him open his trousers?

A Yes, sir.

Q You saw him open them? A Yes, sir.

Q And where were you when he opened his trousers?

A His trousers?

Q Yes. A In the cellar.

Q Well, you were in the cellar? A Yes, sir.

Q Was Frank sitting down or standing up? A Sitting down.

Q Were you sitting down or standing up? A Standing up.

Q In front of him? A Yes, sir.

Q Were you in front of him? A Yes, sir.

Q Now, where did you go, after you told the lady what had happened? A The lady took me in my house.

Q Took you to your house? A Yes, sir.

Q Took you to your home? A Yes, sir.

Q Took you to your mother? A Yes, sir.

Q And did you tell your mother what happened?

A Yes, sir.

Q Right then and there? A Yes, sir.

Q That same day? A Yes, sir.

Q Did you see a doctor? A Yes, sir.

Q Did the doctor look at you? A Yes, sir.

Q Do you know the doctor's name? A Yes, sir.

Q What was it? A William P. Byrne.

Q He is your doctor, isn't he? A Yes, sir.

Q Was that the same day that he looked at you?

A That same night.

Q That same night? A Yes, sir.

Q Did you tell him what had happened? A Yes, sir.

Q Did you see Frank come out of that cellar?

A No, sir.

Q You didn't? A No, sir.

Q You went out first? A Yes, sir.

BY THE COURT:

Q John, did you tell the lady who it was did this to you?

A Yes, sir.

Q You told her his name? A Yes, sir.

CROSS EXAMINATION BY MR. RADIGAN:

Q How old are you, John? A Nine years old.

Q Nine years? A Yes, sir.

Q Do you go to school; do you? A Yes, sir.

Q What school do you attend? A 68th street school.

Q What is your teacher's name? A Miss Sullivan.

Q Miss Sullivan? A Yes, sir.

Q Do you know what day of the month this was on?

A No, sir.

MR. ISBLIN: I will fix the date, counsellor.

BY MR. RADIGAN:

Q How long did you know Frank Deposito, this boy here (indicating the defendant)? A Last winter, or last summer, I know him.

Q Did you often talk to him before that time?

A Yes, sir.

Q And you knew him by name, did you?

A Yes, sir.

Q He lived in your block for some little time; didn't he? A Yes, sir.

Q Has he any brothers? A Yes, sir.

Q Do you know what Frank does? What work he does?

A No, sir.

Q Do you know whether or not he runs a wagon for his father, a little hand cart? A No, sir.

Q Do you know whether or not there was a club in that cellar, to which the boys used to go downthere?

A Yes, sir.

Q And do you know what club was used for? What the

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boys went down there for? A Bad things.

Q Bad things? A Yes, sir.

Q And how many boys went down there for bad things?

A A whole lot of them.

Q Had you ever been down there before? A This was the second time.

Q With other boys? A No, sir; this same boy.

Q And when were the other times that you went down there? A I went to school, and when school was over, at three o'clock.

Q Now, when was it, Johnnie that you went down there? How long before this time? A It was last summer.

Q Last summer? A Yes, sir.

Q Did you tell anybody about that? A He said, "If you tell your father, I will kill you."

Q Did you tell anybody at all? A No, sir.

Q Well, did you talk to him, the next day? A No, sir.

Q Did you talk to him, a week after that time?

A Yes, sir.

Q You were not afraid of him; were you? A No, sir.

Q Did you play with him, at other games? A No, sir.

Q Did you meet him on the street, very often? A Yes, sir.

Q Every day? A Yes, sir.

Q Did you talk to him? A No, sir; not every day.

Q Not every day? A No, sir.

Q Well, how often did you see Frank?

A Every day.

Q Did they have dumb bells down in that cellar?

A No, sir.

Q Do you know what they are? How big is that fellow?

MR. ISELIN: Just wait a minute. Let us get an answer to your first question.

BY MR. ISELIN:

Q Do you know what dumb bells are? A Yes, sir.

Q What are they made of, John? A Wood.

Q Where have you seen dumb bells? A Up at the Gerry Society.

BY MR. RADIGAN:

Q How big is that cellar, John? A big place? A Yes, sir.

Q Well, never mind how big. Now, how many rooms was it divided into? A He broke through all the cellars, he did.

Q Oh, when did he do that? A I don't know when.

Q You mean by that that he took the partitions down, the wood that divided the cellars? A Yes, sir.

Q Well, when were you in there before that day, Johnnie?

A Well, when school was out.

Q When school was out? A At three o'clock that afternoon.

Q That was in the month-- that was this month?

A Yes, sir.

Q Was it August or July? A August.

Q Well, I will withdraw that question. Now, what did you go in there for, that other time? A He said, "If you tell your father, I will kill you."

Q Well, was that the other time that you had something to do with him? A Yes, sir.

Q That was once more, besides this time?

A No, sir; only when I went to school, that afternoon.

Q Did you tell any of your school mates that you did bad in that cellar?

A No, sir.

Q Did you tell anybody about it? A No, sir.

Q Now, where did the Gerry Society man come to see you? A It was on a Thursday, I believe it was.

Q Well, was it night or day, Johnnie? A Day.

Q In the day? A Yes, sir.

Q And when they took you down to their rooms, what did they do with you?

MR. ISELIN: Now, I object to that. How can it be competent?

THE COURT: I will let him answer it. You may answer it, Johnnie.

A They leave me have a bath, first and took me upstairs to something to eat, and then took me on the roof and it is all screens up there.

Q Who was that, Johnny? Do you know the gentleman's name who did that, who took you up there? A No, sir.

Q Is he in Court? A Yes, sir.

Q Now, was anybody talking to you about the case this morning?

MR. ISELIN: Just wait. I want the answer.

MR. RADIGAN: Question withdrawn.

BY THE COURT:

Q Did anybody talk to you about the case? A Here, or up there?

Q Any place? A Here.

Q Who spoke to you here about the case? A Two boys downstairs. They said, "What is the matter?" I wouldn't answer them.

BY MR. RADIGAN:

Q Well, did the man who brought you to Court talk to

you, Johnnie? Did he tell you he was going to bring you to Court? A Yes, sir.

Q Did he tell you what the Court was like?

A No, sir.

Q Did he say you would have to take the witness stand?

A Yes, sir.

Q And did he say anything to you about what you were going to say? A No, sir.

Q Did he ask you that question?

A No, sir.

MR. ISELIN: What question?

MR. RADIGAN: The last question I asked.

BY MR. RADIGAN:

Q Now, about how many people in the Gerry Society, Johnny, did you speak to?

MR. ISELIN: About what? I ask that the subject be fixed.

BY MR. RADIGAN:

Q About your case? A The whole lot of them.

Q What did they say to you? A They said, "What is the matter with you", and I wouldn't answer.

Q Well, I don't mean boys who were with you there. I mean people connected with the Society. Did they say anything to you? A No, sir.

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Q Nobody at all? A No, sir.

Q Just told you you were coming to Court? A Yes, sir.

Q Did they ask you some questions about the case?

A Yes, sir.

Q Who asked you those questions? A They took me downstairs.

Q Downstairs? A Yes, sir.

Q In what kind of a room, Johnny? A Where all cases were.

Q Well, how many boys were in that room, at that time? A Three more.

Q Three more? A Yes, sir.

Q Now, who was the man took you down there? A On the elevator.

Q Well, who went with you, I mean? A A whole lot of other boys.

Q A whole lot of other boys? A Yes, sir.

Q Then didn't some man take you with him downstairs?

A Yes, sir.

Q Yes. Well, who was that man? A Oh, the elevator man.

Q Well, did anybody accompany you from the Gerry Society down to those rooms, or a man? A Yes, sir.

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Q Did he talk with you? A Yes, sir.

Q Did he ask you questions?

A Yes, sir.

Q Was it he who told you you would have to come from
the Court? A Yes, sir.

Q Now, how long were you down there? A We had to wait
until the patrol came.

MR. ISELIN: He means a room in the Gerry Society
Building, in 23rd street.

MR. RADIGAN: Oh, that is it?

BY MR. RADIGAN:

Q Well, when the patrol came, did you get in?

A Yes, sir.

Q Well, that was today; was it?

A Yes, sir.

Q Well, I mean before today? You have been down there
how long, if you remember? A No, sir.

Q You remember? A No, sir.

Q How many days in a week? A Seven days.

Q Now, have you been there a week? A Yes, sir.

Q You have been there a week? A Yes, sir.

Q Now, when the Gerry Society gentleman came up to your
house, did he talk to you about the case then? A They didn't

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come up to my house.

Q Well, where did they find you, first? A My father took me to the doctor's first, and up to the station house.

Q And then to the station house? A Yes, sir.

Q And after that, the Society came? A No, sir.

Q Tell me, then, what happened? A I went to 54th street Court, in the morning, at first.

Q Oh, you went to the 54th street Court?

A Yes, sir.

Q What did you tell the Judge sitting there what happened?

A Yes, sir.

Q And was it then that the gentleman from the Society talked to you? A No, sir.

Q Where did he first see you? A A man brought me down to the Society.

BY MR. ISSELIN:

Q Who was the man? A I don't know the man.

Q Did you tell him about the case?

A No, sir.

BY MR. RADIGAN:

Q Didn't you talk to him at all? A No, sir.

BY THE COURT:

Q You told the Judge about it, didn't you? A Yes,

sir.

Q And he sent you to the Gerry Society, then? A A man.

Q Well, did the Judge send you there? A Yes, sir.

BY MR. RADIGAN:

Q Now, today, coming to Court, how many boys were with you in the patrol, Johnny? A Three.

Q Three? A Yes, sir.

Q And were they all talking about their cases?

A No, sir.

Q Did you have anything to say about your case?

A No, sir.

Q Did you have anything to say to the man that came with you? A No, sir.

Q What? A No, sir.

Q Didn't he tell you that there was going to be a trial, today? A No, sir.

Q Who told you you were coming to Court today? A A man.

Q Well, did he tell you you were going to take the witness stand?

MR. ISELIN: Oh, he said that. He has answered that.

BY MR. RADIGAN:

Q Johnny-- A Yes, sir.

Q He told you that? A Yes, sir.

Q Did he ask you if you understood what an oath was? A Sir?

Q Did he ask you if you knew what an oath was?

MR. ISSELIN: Objected to.

THE COURT: Objection sustained.

A I don't know what he said.

MR. ISSELIN: No. Don't answer, Johnny.

The Court doesn't want you to answer that question.

BY MR. RADIGAN:

Q You don't wear suspenders, do you, Johnny? A No, sir.

Q Where was this lady? A Sitting outside of the door, until I came out.

Q Now, how did you get into the house? Through the front door? A Yes, sir.

Q Then how did you get into the cellar? A It is stairs there (illustrating).

Q Are the stairs in front of the house or in the back? A In the back of the house.

Q And you went back there? A Yes, sir.

Q Now, where was the club room where the boys used to

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play? In the front or back part of the cellar? A In the
back part of the cellar.

Q. What was that?

MR. ISSELIN: In the back of the cellar, he said,
where they did bad things.

THE COURT: We may as well suspend here. I will
not let this case go to the jury, today. I will
let the case go over until tomorrow morning, at 11
o'clock.

And, in the meantime, gentlemen of the jury,
I am required to give you the usual statutory
caution, not to talk about the case among yourselves,
or allow anyone to talk with you about it; or form
or express any opinion concerning it, until it is
finally submitted to you.

You are excused until tomorrow morning at 11
o'clock.

The Court will take an adjournment until
tomorrow morning at 11 o'clock.

(The trial was then adjourned until Tuesday morning,
August 15, 1905, at 11 o'clock).

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TRIAL RESUMED.

New York, August 15, 1905.

JOHN REILLY, the complaining witness, being recalled for further cross examination, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. RADIGAN:

Q Johnny, how long were you in the cellar on that day?

A I don't know how long I was in the cellar.

Q Well, you know how long five minutes is?

A No, sir.

Q Do you know how long half an hour is?

A No, sir.

Q When you came out of the cellar, where was the lady standing to whom you spoke, Mrs. Howard? A Yes, sir.

Q Where was she? A On the sidewalk.

Q Right outside? A Yes, sir.

Q Right outside this building? A Yes, sir.

Q And what was the number of that building? A 321.

Q Was she standing there or walking up and down?

A Standing there.

Q What did she say to you then? A "What was that boy doing to you?"

Q Which boy did she mean?

MR. ISELIN: Well, now, I object.

MR. RADIGAN: Question withdrawn.

BY MR. RADIGAN:

Q Where was that boy at that time? A In the cellar.

Q Now, there was no front entrance to the cellar; was there? A No, sir.

Q You were dressed-- did you have the same kind of clothes on then that you have on now? A No, sir.

Q What kind of a suit of clothes did you have on?

A A waist that had short sleeves.

Q Did you have a waist on or suspenders? A Suspenders.

Q Buttoning in the back? A Yes, sir.

Q Who unbuttoned them? A That boy did (indicating the defendant).

Q When did he unbutton them? A When he took me down in the cellar.

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Q Well, when he first met you on the street at No. 301,
what did he say to you then? A "Come on down in the cellar",
and I said, "No; I don't want to go down."

Q Now, did you know what cellar he meant, at that
time? A No, sir.

Q Did you know what he wanted to see you for, at that
time? A No, sir.

Q Did he tell you then that he wanted to do bad things?
A Yes, sir.

Q He did? A Yes, sir.

Q At that time? A Yes, sir.

Q Were people walking all over the street, at the
time? A No, sir.

Q Didn't you pass anybody? A No, sir.

Q Johnny, how many doors was this cellar from where he
first spoke to you; how far was it?

A One door.

Q One door? A yes, sir.

Q Why, when he first spoke to you, wasn't it at 301?

A Yes, sir.

Q Now, where is this cellar? It is 321, as I under-
stand? A Yes, sir.

Q And that is quite a few doors down; isn't it?

A Yes, sir.

Q Quite a crowded block there, isn't it?

A Yes, sir.

Q Now, what time was it about? Two o'clock in the afternoon, or thereabouts? A Yes, sir; about two o'clock.

Q After dinner; wasn't it? A Yes, sir.

Q Now, that is quite a crowded block, isn't it?

A Yes, sir.

Q A great many children and people live in that block?

A Yes, sir.

Q Any children there at that time? A No, sir. In the hall they had pipes and water.

Q Oh, now, where were those children who had pipes and water at that time? A Sitting in the hall yet.

Q Sitting in the hall? A Yes, sir.

Q That is the halloff this boy's home? A Yes, sir.

Q Now, they were there when you went in, weren't they?

A Yes, sir.

Q And did he talk to you before those boys? Were they right there? A Yes, sir.

Q What did he say to you while those boys were there?

A He didn't say nothing to me.

Q What did you say to him? A Nothing.

Q Nothing to him? A No, sir.

Q Now, how many boys were there, Johnny? A It was three boys there.

Q Three boys? A Yes, sir.

Q Were they big boys? A No, sir; small boys.

Q As big as you are? A Yes, sir.

Q Any of them as big as this boy? A No, sir.

Q Now, you went down the cellar with him through the rear; didn't you?

A Yes, sir.

Q And he asked you while he was up in the hallway, to go down cellar with him; didn't he? A Yes, sir.

Q And how many times had you been in that cellar before? A Once.

Q Only once? A Only once before.

Q Well, you knew what was going on in that cellar, didn't you, Johnny? A Yes, sir.

Q And you knew what he was going to do to you, didn't you? A Yes, sir.

Q Well, why did you go down there? A He walked behind me to see if I would run away.

Q To see if you would run away? A Yes, sir.

Q Now, he asked you up on the corner to go down cellar with him; didn't he? A Yes, sir.

Q And you walked right along with him; didn't you?

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A Yes, sir.

Q And, at that time, did you know that he was going to do something bad? A No, sir.

Q Didn't he ask you, when you were sitting down on the stoop at 301? A Yes, sir.

Q And you knew, at that time, what he was going to do; didn't you? A Yes, sir.

Q Was this lady outside there when you went down?

A No, sir.

Q Is there a window in the front of the cellar?

A No, sir.

Q Is it a dark cellar? A Yes, sir.

Q Do you know who lives on the first floor of that house? A No, sir.

Q Were there any grown people, that is, big people in the hallway as you went in? A No, sir.

Q Was the woman who lives-- was the woman's doors who lives in that apartment open? A Yes, sir.

Q They were open? A Yes, sir.

Q People were going in and out there? A No, sir.

Q Did you see anybody in the house, as you went in?

A Yes, sir.

Q Are they white or black? A Black, Italians.

Q Italians? A Yes, sir.

Q That was on the ground floor, or first floor?

A Yes, sir.

Q Any colored people living there? A No, sir.

Q In that block? A No, sir.

Q Was this boy ever up to your house?

A No, sir.

Q I think you told me, yesterday, that, after the first wrongdoing, or after the first bad act you saw him about a week after that? A Yes, sir.

Q And did you play with him then or talk to him?

A No, sir.

Q What did you have to say to him then? A After this time?

Q After the first time? A I said, "Hello," to him, every time.

Q Every time you saw him? A Yes, sir.

Q Did you talk to him long? A No, sir.

Q Do you know that he works for his papa?

A No, sir.

Q Do you know what he does? A No, sir.

Q Did you ever see him pushing a small wagon along the street, with wood in it? A No, sir.

Q Did he ever deliver wood at your house? A Sir?

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Q Did he ever carry wood up to your papa's house?

A No, sir.

Q What floor do you live on? A The first floor.

Q Yes; right off the ground? A Up above the ground.

BY MR. ISELIN:

Q How many flights, Johnny?

BY MR. RADIGAN:

Q How many stairs up? Just one? A Yes, sir.

Q How many rooms there? A Four rooms.

Q You are on the street a great deal; are you?

A Yes, sir.

Q You play around the streets a great deal?

A Yes, sir.

Q With lots of other boys? A Yes, sir.

Q How early do you go to bed at night? A I don't know what time I go to bed.

Q Can you tell the time, Johnny? A Yes, sir.

Q Now, you were afraid this lady was going to tell your papa, were you? A Yes, sir.

Q And that is why you told her? A Yes, sir.

Q You think that she saw you down cellar?

A No, sir.

Q She couldn't see you, could she? A No, sir.

Q Did you know, when you went down cellar that she was

outside? A Yes, sir.

Q Could you see her outside when you went down cellar?

A No, sir; she was looking out of the window.

Q Which window, Johnny?

BY MR. ISELIN:

Q Now, do you know that? Did you see her looking out of the window, or did she tell you afterwards? A I saw her looking out of the window.

BY MR. RADIGAN:

Q Which window was she looking from? A On the top floor window.

Q In the back or front of the house? A On the front of the house.

Q On the front of the house? A Yes, sir.

Q She just saw you go in the house? A Yes, sir.

Q Were the little children who were playing with pipes and bubbles on the front stoop or in the hall? A In the hall.

Q Did you know any of the boys? A No, sir.

Q Had you ever seen them before? A Yes, sir.

Q Did you ever play with them? A No, sir.

Q Do you know their names? A No, sir.

Q Did you say anything to them that you were going down cellar? A No, sir.

Q You knew you were going down then; didn't you?

A Yes, sir.

Q Were you afraid to say anything to them?

A No, sir.

RE DIRECT EXAMINATION BY MR. ISSELIN:

Q You told us, yesterday, Johnny, that the boys met in this cellar and had a kind of club, for doing bad things?

A Yes, sir.

Q Do you remember telling us that? A Yes, sir.

Q Now, I want you to tell us whether they were big boys like Frank, or little boys? A They were big boys, like Frank.

Q Were there any other little boys that you know of?

A No, sir.

Q How many big boys were there? A I don't know how many.

Q Did this club have any name? A No, sir.

Q You never heard a name for it? A No, sir.

Q Now, when you came out of that cellar, you told Mr. Radigan just now, that Mrs. Howard asked you, "What was that boy doing to you?"

A Yes, sir.

Q Did she? A Yes, sir.

Q And what did you say to Mrs. Howard? A I told her the same thing.

Q What did you tell her? A I told her, the lady, that he took down my drawers, and took out his thing, and stuck it in my behind.

Q And what did Mrs. Howard say to you? A "Come on up in your house, and I will tell your mother."

MR. RADIGAN: I object to that, if your Honor please; I object to the conversation with Mrs. Howard.

MR. ISELIN: If your Honor please, my learned friend asked what Mrs. Howard said to the little boy when he came out.

THE COURT: He may answer.

MR. RADIGAN: I withdraw the objection. I remember that I did so.

BY MR. ISELIN:

Q Did Mrs. Howard say anything else to you? A No, sir.

Q And then you went to your house with Mrs. Howard?

A Yes, sir.

Q And did she tell your mother what ~~was~~ you had told her? A Yes, sir.

Q And did you tell your mother? A Yes, sir.

Q Now, when you came out of that cellar, were your

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pants buttoned up? A Yes, sir.

Q Now, when you say Frank Deposito put his thing into you, as you say he did, did he hurt you? A Yes, sir.

Q Did you cry? A No, sir; I couldn't cry; he held my mouth (illustrating).

Q No. I don't mean whether you yelled or not. I mean whether you cried? A Yes, sir.

Q Now, when Frank spoke to you about going into that cellar, did he say anything about there to get a cart or anything of that kind? A No, sir.

Q Did you see a cart in that cellar?

A No, sir.

Q How was that cellar lighted? A It was all dark there, and it was all logs there.

Q Well, where did the light come from? How did the light come into the cellar; through a window? A He had a candle there.

Q He had a candle there? A Yes, sir.

Q Was there any window? A No, sir.

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LOUISA HOWARD, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q Mrs. Howard, where do you live? A 319 West 67th street.

Q 319 West 67th street? A Yes, sir.

Q You are a married lady? A Yes, sir.

Q And does your husband live there with you? A My husband is dead.

Q Your husband is dead? I beg your pardon?

A Yes, sir.

Q Have you any children? A One little girl.

Q And she lives with you? A Yes, sir.

Q Now, do you remember the second day of August of this year? A Yes, sir.

Q By the way, West 67th street is in the County of New York, isn't it? A Yes, sir.

Q Did you see this little boy Johnny Reilly on the 2nd of August? A Yes, sir.

Q And did you see the defendant Frank Deposito on that day? A Well, I seen him after the thing occurred, but not before.

Q Well, you saw him on that day, didn't you? A Yes, sir.

Q Well, now, about what time-- I withdraw that.

Do you know where Frank lives? A 321 West 67th street.

Q That is, the next house to yours? A Yes, sir.

Q Did you see little John Reilly near that house on that day? A Yes, sir.

Q About what time was it? A About two o'clock.

Q In the afternoon? A Yes, sir.

Q And where were you? A Looking out of the window.

Q Front window? A Front window.

Q Of your apartment? A Yes, sir.

Q On what floor do you live? A Top floor.

Q And what did you see Johnny doing when you first saw him? A I saw him going in the house.

Q Going in what house, Madam? A 321.

Q 321 West 67th street? A Yes, sir.

Q Was he alone? A Yes, sir.

Q Was there any other boy that you saw on the street there? A There was another little Italian boy, in front of the door.

Q How near was he to Johnny? A Well, Johnny was in the hall, and he was standing in front of the door.

Q How far was Johnny from 321, at the time you first saw him? A Right next to my home. I saw him going in the next house.

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Q And what did you do? A Well, I heard remarks passed and I looked out of the window.

Q Who passed the remarks? M A This little boy.

Q The little Italian boy? A Yes, sir.

Q Was Frank there at the time? A No, sir; I didn't see him.

Q And did you look out of the window still?

A Yes, sir. And then I heard this remark passed and I told mamma I seen this little boy going in.

Q No, no. We will strike that out. That is not proper, unless Frank was there? A He was not there then.

Q What did you see next? A Well, I didn't see anything.

Q And what did you do then? A I went down.

Q And where did you go to? A I went into the hall of 321.

Q You went into the hall of 321? A Yes, sir.

Q It is the hall of the house next door to you?

A Yes, sir.

Q That is where Frank lives? A Yes, sir.

Q And what did you find in the hall?

A Nothing. I called and I got no answer.

Q What did you call? A I called Johnny Reilly.

Q And you knew his name; did you? A Yes, sir.

Q And you knew where he lived? A Yes, sir.

Q And had seen him around the streets before?

A Yes, sir.

Q And you knew Frank's name? A Yes, sir.

Q And had seen him before? A Yes, sir.

Q And do you know what his father did or does?

A Well, I believe he takes care of furnaces. That is all I know about it.

Q Well, you went into this hall, and called Johnny?

A Yes, sir.

Q And did you get an answer? A No, sir.

Q Now, then, what did you do? A I opened the cellar door, and called and got no answer.

Q You opened the cellar door and called and got no answer? A Yes, sir.

Q Now, will you tell the jury where this cellar door was that you opened? A Right in back of the stairs.

Q Right in back of the stairs? A Yes, sir; and there is a flight of stairs going down.

Q Well, is it a straight up and down door or one that you lift up (illustrating)? A Straight up and down.

Q And you opened that door? A Yes, sir.

Q And what did you do? A I called Johnny and got no

answer.

Q And what did you do then? A I went outside and was speaking to my mother, up at the window.

Q Where did you go? A In front of 319, my own door.

Q And how far was that from the front of 321? A Well, I couldn't tell you the distance. It isn't far.

Q Well, about how many feet? Guess at it.

BY THE COURT:

Q About how far? About the width of one house?

A Yes, sir.

BY MR. ISELIN:

Q And you stood there; did you? A Yes, sir.

Q And then what happened? A I stood there about five or ten minutes, and I saw little Johnny coming out, and he couldn't hardly walk.

Q You saw him coming out and he could hardly walk?

A Yes, sir.

Q And what made you think so, that he could hardly walk? A Well, I saw how the little boy came out.

He was white, and he trembled, and his lips were blue.

Q He was white and he trembled and his lips were blue?

A Yes, sir; and I said, "Johnny, where were you?"

And he started to cry, and I said, "Well, tell me. I won't

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hurt you; I won't tell anybody."

Q Then what happened? A So then I went-- he told me what happened. So I took him ---

Q Well, now, tell us what he told you?

MR. RADIGAN: Objected to.

THE COURT: Objection sustained.

A He told me---

MR. RADIGAN: Objected to.

THE COURT: No; you cannot tell that.

MR. ISSELIN: I submit that the door was opened by counsel for the defendant by asking the child what he said to this witness.

THE COURT: No. You can prove immediate complaint, but you cannot give the complaint.

MR. ISSELIN: Not on the opening of the door by the defendant's counsel?

THE COURT: No; not other than he did make complaint and communicated the fact.

BY MR. ISSELIN:

Q Did he say anything about Frank here (indicating the defendant)? A Yes, sir; he told me he took him down in the cellar and---

MR. RADIGAN: Objected to, as before.

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THE COURT: ~~Objection sustained.~~

BY MR. ISSELIN:

Q And then what did you do? A I took him to his mother and told his mother.

Q Where was it that you took him to his mother?

A 311 I believe it is, 67th street.

Q What floor? A One flight up.

Q Are you sure it is not 313? A I don't know the number. Maybe it is 313.

Q maybe it is 313? A Yes, sir.

Q How was little Johnny dressed at that time, Mrs. Howard? A Well, I know he had a light pair of pants, and a light cap, and, I think, a blue sweater, with short sleeves.

Q Short sleeves? A yes, sir.

Q Did you see Frank Deposito come out?

A No, sir.

Q You told me, a little while ago, that you saw him after this happened. How long after did you see him?

A Half an hour afterwards.

Q Where was he then? A He was coming down the street, with a wagon full of wood.

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

Q And he didn't speak to you? A No, sir.

Q Now, when you took Johnny back to his mother's, did

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you stay there for any length of time?

A Yes, sir.

Q What did his mother do with Johnny? A His mother examined him.

Q Well, what do you mean by that? A Well, she examined him and washed him, give him a bath.

Q Were you present when she examined him?

A Yes, sir.

Q Did you hear what Johnny said to his mother?

MR. RADIGAN: Objected to.

THE COURT: Sustained.

BY MR. ISELIN:

Q Now, did you see Johnny when he was undressed?

A No, sir.

Q You didn't see him when he was undressed?

A No, sir.

Cross examination: None.

BY THE COURT:

Q Did you notice anything other than you have described in the child's appearance, when he came out of that cellar? A Well, the only thing I seen was that he could hardly walk, and his lips were blue, and he was white.

Q And when he told you about it, what did he do?

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A He cried.

Q He cried? A Yes, sir.

Q He just told you what had been done?

A Yes, sir.

C A R R I E R E I L L Y, a witness called on behalf of
the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ISELIN:

Q Mrs. Reilly, where do you live? A 313 West 67th
street.

Q Where do you live, Madam? I didn't catch it?

A 313 West 67th street.

Q In the county of New York? A Yes, sir.

Q And you live there with your husband? A Yes,
sir.

Q You have children? A Yes, sir.

Q What are their names? A John and Hughey.

Q Little Johnny was the first witness in this case,
wasn't he? A Yes, sir; John; he is my son.

Q He is your eldest son; is he? A Yes, sir.

Q And you have another boy? A Yes, sir.

Q And how old is Hughey? A Seven.

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Q And how old is Johnny? A Nine.

Q You have no other children? A No, sir.

Q Now, do you remember the 2nd day of August, 1906
when Mrs. Howard brought Johnny home to you?

A Yes, sir.

Q And how long before Mrs. Howard brought Johnny home,
had you seen Johnny? A When he had his dinner.

Q When he had his dinner? A He had his dinner around
one o'clock and then he went out, and he played about half an
hour, and then he came back again.

Q To your house? A To my house.

Q And you were in? A Yes, sir.

Q And your husband wasn't there; was he? A No, sir;
he was working. And he asked me could he have---

Q No. We can't tell anything that was said there, Mrs.
Reilly, in the absence of the defendant. Now, Johnny came in
about half an hour after he had been in to lunch and talked
to you? A Yes, sir.

Q And then went out again? A Yes, sir.

Q And when did you see him again? A I didn't see him
until Mrs. Howard brought him into me.

Q Well, what time was that, about? A Between two and

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half past two o'clock.

Q Between two and half past two o'clock? A Yes, sir.

Q In the afternoon? A Yes, sir.

Q And Mrs. Howard brought him up to you?

A Yes, sir.

Q Did Mrs. Howard speak to you? Don't tell us what she said? A No, I won't tell it.

Q Did she speak to you? A Yes, sir.

Q Did Johnny speak to you? A Not until she told me what had happened.

Q And then Johnny spoke to you? A Yes, sir.

Q And you spoke to him? A Yes, sir.

Q Now, describe Johnny's appearance, when Mrs. Howard brought him in? How did he look and act? A He looked very pale, very pale.

Q Any trace of tears or crying on his face? A No, sir; no tears; but he was very nervous like, trembling.

Q Did you scold him? A No, sir, I didn't.

Q Well, what did you do with him? A I just merely asked him what had happened.

Q Well, don't tell us what you said to him, but what you did with him? Did you undress him or anything?

A Yes, sir; I undressed him. I thought he was such a filthy looking young man; I thought he didn't look very clean.

Q How do you mean that he was filthy looking, and didn't look clean? A Well, he didn't look tidy looking, to me, as I kept my children.

Q Did you take his pants off? A Yes, sir.

Q What was the condition of his person behind, when you took his trousers off? A Dirty looking, black.

Q Did you see any blood? A No, sir.

Q And you washed him? A Yes, sir; gave him a bath.

Q What? A I bathed him; washed him.

Q And how was he dressed when he came in to you?

A What do you mean. His top, his outside clothes?

Q Did he have on suspenders and a waist, and so on?

A Yes, sir; he had a sweater, with short sleeves.

Q And suspenders? A Yes, sir.

Q And little pants, I suppose? A Yes, sir; knee pants.

Q And you took them off, I suppose? A Yes, sir; I took everything off.

Q Now, did you take Johnny to the doctor, at any time?

A I told Mrs. Howard to keep this quiet until my husband---

MR. RADIGAN: I object to that, and move to strike it out, if your Honor please.

THE COURT: Yes; strike it out.

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BY MR. ISMLIN:

Q No; never mind that. What happened then? A I waited until my husband came home.

Q When did he come home? A About five o'clock, or a little after.

Q And what did he do then? A He took him to the doctor.

Q What doctor? A Dr. Byrne.

Q And then your husband took him to the doctor?

A Yes, sir.

Q Now, how long have you known Frank Deposito?

A Since I am in that block.

Q What? A I guess, since I am in that block; since I am living there.

Q Well, how long is that, Mrs. Reilly? A Well, I don't know. They are living there as long as I am.

Q And how long have you been living there? A About nine years.

Q Have you seen Frank often during that time? A Yes, sir.

Q Do you know what he was doing for a living? A Well, he was helping his father, as far as I knew.

Q And what was his father's business? A Taking care of furnaces.

Q And do you know where he lived, Frank? A Yes, sir;
321 West 67th street.

Q On what floor? A I think it is on the second
floor.

Q And have you ever been in that building? A No, sir.

Q Have you ever talked with Frank? A No, sir.

Q In your life? A No, sir.

Q After this thing or before? A No, sir.

Q Now, did little Johnny go to school? A Yes, sir.

Q How long has he been going to school? A Since he is
seven years old; public school. Before that, he went to
kindergarten.

Q He has been going since he was seven years old?

A Yes, sir.

Q And what school did he go to? A 68th street.

Q Do you know the name of his teacher? A Miss Sulli-
van.

Q Miss Sullivan? A Yes, sir.

Q And has he gone to Sunday School? A Yes, sir.

Q What is he? A Catholic or Protestant?

A A Catholic.

Q A Catholic? A Yes, sir.

Q And where does he go to Sunday School? A 67th
street.

Q And has he gone regularly to Sunday School? A Yes,

sir.

Q For how long? A Well, the past winter back.

Q Has he gone regularly to school? A Yes, sir.

Q Never had any trouble with Johnny? A No, sir; not a bit.

Cross examination: None.

BY THE COURT:

Q I want to ask you one question, Madam. You say that Johnny has been going to school since he was seven years of age? A Yes, sir.

Q And goes to Sunday school? A Yes, sir.

Q Does he know the catechism? A Well, I suppose so.

Q Well, he studied it at Sunday school? A Yes, sir.

W I L F R E D P. B Y R N E, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY ISBLIN:

Q Doctor, where do you live? A 23 West 65th street.

Q And you are a physician and surgeon duly admitted to practice in this State? A Yes, sir.

Q How long have you been so admitted to practice?

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A Fifteen years.

Q Fifteen years? A Yes, sir.

Q Are you the family physician of the Reillys?

A Yes, sir.

Q Do you know this little boy, Johnny Reilly? A I do.

Q You have seen him here in Court? A Yes, sir.

Q And you have seen his mother, Mrs. Reilly, who has just been on the stand? A Yes, sir.

Q You know her? A Yes, sir.

Q How long have you known them? A Since about the 1st of January.

Q Since about the 1st of January of this year? A Yes, sir.

Q Now, do you remember the 2nd day of August of this year, doctor? A Yes, sir.

Q The 2nd of August? A Yes, sir.

Q Did you see little Johnny Reilly on that day?

A I saw him in my office, about seven o'clock in the evening.

Q With whom? A With his father.

Q With his father? A Yes, sir.

Q And what did you do, in respect to Johnny? A Made an examination of his rectum.

Q Of his rectum? A Yes, sir.

Q State to the jury what you found on your examination?

A I discovered that the parts were red and inflamed, and slightly lacerated; that is, there was no distinct break in the skin, but the membrane, what we call the mucous membrane, which is the same as on the lip, was peeled off. That was all I found.

Q Now, doctor, as a physician, would you say that this injury that you speak of might have been caused by the insertion of a blunt instrument into the rectum?

MR. RADIGAN: Objected to.

THE COURT: I will sustain the objection. He may ask the doctor if he was able from the condition of the rectum, to determine what occasioned the injury, in his opinion.

MR. ISELIN: I substitute the question.

A I think that an attempt was made to force something into the rectum.

MR. RADIGAN: I object to that, and move that the answer be stricken out, stricken from the record.

THE COURT: No; I will allow that. I will let the answer stand.

MR. RADIGAN: Exception.

BY THE COURT:

Q Doctor, was this injury that you describe of the mu-

cous membrane inside of the rectum, or outside? A No; just at the beginning of the rectum, at the entrance of the rectum.

Q Doctor, you know the exact meaning of the word penetration, in such cases? Was there a penetration there?

A Very slight, I should say.

BY MR. ISELIN:

Q Well, doctor, was this injury that you speak of on the mucous membrane or the skin? A On the mucous membrane.

Q Now, the mucous membrane is within the orifice of the anus; isn't it? A No, sir; it is not. It is rather a fine line to draw.

Q Yes, I thought so. In other words, the mucous membrane extends without the rectum? A Partially.

Q Comes out of the rectum; is that right? A Well, there are two divisions between the rectum, and what is described as the external part is called the anus.

BY THE COURT:

Q Well, was there a penetration of this anus, an evident penetration of the anus in this case? A I think not any.

BY MR. ISELIN:

Q Let me ask you another question. Was there an evident

penetration of the rectum? A No. The rectum is within the anus. The rectum is higher up in the body than the anus. The rectum is that portion of the bowel which extends from the anus, which is the round, circular opening up to within five or six inches of the abdomen.

Q Well, was the injury within the round, circular opening or outside of it? A Within the round circular opening, as separating the opening.

Q So that, whatever occasioned that injury, must have been inserted into the opening; is that right? A Well, yes. The opening is rather large, you understand?

Q Well, I know. I am not after the size of the opening.

MR. RADIGAN: I object to this line of examination, if your Honor please, as utterly immaterial.

THE COURT: I will allow the question.

MR. RADIGAN: Exception.

BY MR. ISSELIN:

Q But what I want to know is whether the injury that you saw on the mucous membrane, in the place that you have described, was, in your opinion as a physician, occasioned by something inserted into that opening, or something that only touched the person of the boy, outside of that opening?

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A There must have been some force to have occasioned the abrasion.

Q Well, what I want to know is: From the condition of the anus or opening, when you examined the boy, in your opinion as a physician, something, whatever that thing may have been, had been inserted within the opening that you speak of, no matter how slightly? A Yes, sir.

Q Had been so inserted? A Yes, sir.

CROSS EXAMINATION BY MR. RADIGAN;

Q Doctor, was this an abrasion? A Yes, sir.

Q Slight, a slight abrasion? A It was sufficiently large to be seen.

Q Upon the exterior of the mucous membrane; is that it? A Upon the mucous membrane which lines the rectum, yes, the lower end of it.

Q Well, is an abrasion usually caused by a blunt instrument or a sharp instrument? A A blunt instrument.

Q So that a blunt instrument might cause it? A Yes, sir.

Q Assuming that a person is constipated sometime would a passage from the bowels, cause such an abrasion?

MR. ISELIN: Objected to, as it is based upon a hypothesis, the question, and no foundation for that

hypothesis has been laid?

THE COURT: Objection sustained.

BY MR. RADIGAN:

Q How far in was the abrasion, doctor?

MR. ISELIN: In what?

BY MR. RADIGAN:

Q In the anus or rectum? A It was just at the junction of the mucous membrane of the rectum with the skin of the external part.

Q Oh, not inside at all? A Well, that would require an explanation, to answer that question. Not inside, because, in drawing down the parts to make an examination, it draws---exposes the mucous membrane to view.

BY MR. ISELIN:

Q The mucous membrane that belongs inside? A Yes, sir. You have to draw that down to make an examination, by separating the parts.

BY MR. RADIGAN:

Q Well, from an optical examination of the anus, could you tell whether an abrasion existed? A Certainly.

Q Yes. Without drawing down the anus? A Well, you would have to separate the parts, and ask the patient to bear down and that forces the muscle out.

Q That is very customary, is it not, doctor, with per-

sons who are constipated?

MR. ISELIN: Now, I object to that.

THE COURT: Objection sustained.

MR. RADIGAN: Exception.

BY MR. RADIGAN:

Q You stated to Mr. Iselin, doctor, that you didn't think that there was any penetration? Is that a correct statement? A Well, I think I afterwards qualified that, when he said, no matter how slight the penetration. From that, I answered that I thought there had been.

Q There may have been a slight penetration, you say?

A Yes, sir.

MR. ISELIN: He said there was.

BY MR. RADIGAN:

Q No blood was present, was there? A None.

BY THE COURT:

Q Doctor, other than the symptoms that you have described, was the condition of that child's person normal?

A Yes, sir.

RE DIRECT EXAMINATION BY MR. ISELIN:

Q You noticed no nervous symptoms of any kind? A No, sir.

Q Now at that examination.

Q And what time was that examination? A Seven o'clock.

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in the evening.

MR. ISBLIN: The People rest, if your Honor please.

MR. RADIGAN: May it please your Honor, I move to dismiss the complaint upon the ground that the People have failed to make out a case.

In proceedings of this character, your Honor is entirely familiar with the necessity for corroboration. There is not sufficient corroboration here to have the jury pass upon the case.

Upon that ground, I ask your Honor to dismiss it, and advise the jury to acquit.

THE COURT: Motion denied.

MR. RADIGAN: I except.

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THE DEFENDANT'S TESTIMONY.

FRANK DEPOSITO, the defendant, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. RADIGAN:

- Q Where do you live, Frank? A 321 West 67th street.
- Q And do you work? A For my father.
- Q And how long have you worked for your father? A About
three or four years.
- Q And what do you do for him? A Take care of furnaces.
- Q How old are you? A Me? 15 years old.
- Q 15 years old? A Yes, sir.
- Q And where do you live? A 321 West 67th street.
- Q Do you remember the 2nd day of August of this year?
- A Yes, sir.
- Q Did you see Johnny Reilly on that day? A Yes, sir.
- Q Where did you see him? A In the lots.
- Q Where are the lots located? A Right in the block.
- Q What is that? A Right in the block there is a

lot.

Q How long have you known Johnny? A I know him for about three or four years, since I am living in the block.

Q Did you speak to him frequently? A No, sir.

Q Did you speak to him on the 2nd day of August, 1905? A He spoke to me first.

Q And what did he say? A He said, "Come down in the club."

Q What club? A The club I used to have.

Q Where was your club located? A In the back of the cellar.

Q Well, what kind of a club was it? A Well, just a regular club; just a little one.

Q And what did you do down there? A Just played all kinds of games.

Q What kind of games? A Checkers and things like that.

Q Did your father send you down to that basement or cellar that day? A Yes, sir.

Q What did you go there for? A To get the wagon, and go for wood.

Q What kind of a wagon is it? A A little express

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wagon.

Q And did you go down for the wagon? A Yes, sir.

Q And did little Johnny go down with you? A Yes, sir.

Q And what was done down there? A Nothing at all. Just to get the wagon up.

Q And how long did you remain there? A He was there five minutes, and I was there ten.

Q And what did you do down there? A I opened the cellar and lit the candle and brung the wagon upstairs.

Q How did you get it upstairs? A Pulled it up.

Q Did you see Mrs. Howard on that day? A No, sir.

Q Did you ever at any time whatever do anything wrong with this little boy? A No, sir.

Q Any wrong act whatever? A No, sir.

Q Did you ask him, this day, to go down in the cellar with you? A No, sir; he axed me.

BY THE COURT:

Q I thought you said your father sent you down there to get the wagon? A Yes, sir.

Q Well, which is true? Did the boy ask you to go down there, or did your father send you down there? A My father asked me first, and then he asked me to come down.

BY MR. RADIGAN:

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Q And where was your father when he asked you to go down? A He was up at the house. It was right noon time.

Q When were you arrested? A The same night.

Q And you have been in prison ever since?

A No, sir.

Q You have been in prison ever since? A No, sir; never.

Q Do you understand my question? You have been locked up since your arrest, haven't you? A No, sir; I never was. It is the first time.

MR. ISSELIN: Oh, I will concede that he has been locked up since he was arrested, counsel.

BY MR. RADIGAN:

Q Were you ever arrested before? A No, sir.

Q Or convicted of anything? A No, sir.

Q Did you go to school? A Yes, sir.

Q What school? A 68th street public school.

Q How long did you go there? A For about nine years.

CROSS EXAMINATION BY MR. ISSELIN:

Q Now, you live at 321, don't you, Frank?

A Yes, sir.

Q And that is the house where this cellar is? A Yes, sir.

Q Where you have your club? A Yes, sir.

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Q What floor do you live on? A First floor.

Q One flight up? A Yes, sir.

Q And your father was there, on this day, wasn't he?

A He was up at the house, at his dinner.

Q Well, you mean the flat, when you say the house?

A Yes, sir.

Q At 321? A Yes, sir.

Q And he told you to go down in the cellar, to get a cart? A Yes, sir.

Q Now, where is the door of the cellar? A Right in the back.

Q Of the hall? A Yes, sir.

Q That is, you go down one flight from your flat and then walk back in the hall to that door? A Yes, sir.

Q Now, Johnny was playing in the lot? A Yes, sir.

Q Now, how was it, if you went down to the cellar to get that cart that your father sent you for, and the door ~~was~~ of the cellar was in the house, that you found Johnny, so that he could ask you, when he was playing out in the lots, as you say he was? A I was just after having my dinner, and I went up for a swim with a couple of other fellows.

Q What? A Went up for a swim with a couple of other fellows.

Q Was this before or after your father sent you for the

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cart? A After.

Q After? A Yes, sir; and I told him that I would be back in half an hour, after I had a swim.

Q Well, why didn't you tell Mr. Radigan, your counsel about that, just now, when he was examining you? A I did tell him about that. I told my father.

Q No. Why didn't you tell Mr. Radigan, who asked you what you did? You told him that you were going for that cart? A Yes, sir.

Q Now, you say that you told your father that you were going for a swim? A Yes, sir.

Q And what did you do when you got back? A I went in the lot, to see if any of the other fellows were there.

Q What for? A Because I just wanted to see if they would come down in the cellar, and get the wagon, with me.

Q Well, what kind of a wagon was it? A It was a small wagon.

Q Couldn't you bring it up alone? A Yes, sir, but the front wheels would come off.

Q Well, did you bring it out that day, alone? A Yes, sir.

Q Well, then, notwithstanding that, after you had had

had your swim, you went into the lot to get some fellows to help you get the wagon out, you got it out alone? A Yes, sir.

Q And where was Johnny when you went into the lot?

A He was standing in the lot.

Q When was that? A About half past one.

Q What did you say to him or he to you? A He asked me to go down in the club.

Q Was he a member of the club? A No, sir; he just wanted to see how it looked.

Q Well, how did he know that there was a club there?

A Because all the fellows in the street used to talk about it.

Q All the fellows in the street used to talk about it?

A Yes, sir.

Q And what did you say to him? A I said, "I haven't got no more club; I busted it up, and I am just going down for the wagon."

Q You told him that you had busted the club up?

A Yes, sir.

Q What did you call your club? A I didn't have no name for it. I only had it up for two weeks.

Q Sure about that? A Yes, sir.

Q Only two weeks? A Yes, sir.

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Q And then you and Johnny went down together?

A Yes, sir; he come in back of me. I went down first.

Q And who came out of the cellar, first? A He did.

Q He did? A Yes, sir.

Q And, when you got into the cellar, what did you do? A Nothing. I went into the cellar, and lit the candle, and started taking the wood off, and said, "Johnny," and he had gone up.

Q He didn't do anything in the cellar? A No, sir.

Q How long did he stay there? A About five minutes. I stayed there for ten minutes.

Q What were you doing there during ten minutes?

A I was taking all the stuff on the wagon off, and pulling the wagon out from all the wood that was on it.

Q And, after you had been there about ten minutes, you came out? A Yes, sir; with the wagon.

Q Now, when Johnny was down there, did you beat him?

A No, sir.

Q Did you hit him over the head? A No, sir.

Q Did you kick him? A No, sir.

Q Did you knock him out of the cellar? A No, sir.

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

Q Then tell me why Johnny was crying, and was

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pale and trembling when he came up out of that cellar?

A He wasn't crying at all.

MR. RADIGAN: There is no such testimony.

MR. ISELIN: Yes, there is; on the testimony of Mrs.
Howard.

BY MR. ISELIN:

Q Why was he white and trembling and his lips blue?

MR. RADIGAN: Objected to, as calling for the
conclusion of this witness.

MR. ISELIN: Let him explain, if he can.

THE COURT: Objection sustained.

BY MR. ISELIN:

Q Do you know why he was crying when he came out of
that cellar?

MR. RADIGAN: Objected to.

THE COURT: Sustained.

A No, sir.

THE COURT: You shouldn't answer when an objec-
tion is made and sustained by the Court.

BY MR. ISELIN:

Q How old do you say you are? A 15 years old.

Q Didn't you tell Mr. Radigan that you were 16 years
old, a minute or so ago? A No, sir, I didn't.

BY THE FIFTH JUROR:

Q Have you got any brothers or sisters? A Yes, sir.

Q How many? A I got seven brothers and one sister.
Two sisters.

Q All living? A Yes, sir.

Q Older or younger? A They are younger. And one is
older than I am.

Q Don't you associate with your brothers? A Sir?

Q Do you associate with your brothers? A Yes,
sir.

Q Go out with them and play with them? A Yes, sir.

BY MR. ISELIN:

Q The sixth juror asked me to ask you if you know what
it means to take an oath here? Do you know what it means
to swear to tell the truth here, the way you have done, this
morning? Do you understand that you have sworn to
tell the truth here? A Yes, sir.

Q And do you understand what that means? A Yes, sir.

Q Oh, when were you 15, Johnny? A November 26th.

Q Last year? A Yes, sir.

Q 1904? A Yes, sir.

Q Can you write? A Yes, sir.

Q Is this your name, Frank Deposito on the paper I
show you (indicating the police court papers)? A Yes,

sir. It is Desposito. That is my name.

Q Did you write that? A Yes, sir.

Q That is your signature? A Yes, sir.

Q And do you remember being asked when you wrote that in the police court, what your name was? A No, sir.

Q Well, do you remember when you signed this paper?

A Yes, sir.

Q Were any questions asked you then? A No, sir.

Q Sure about that? A Yes, sir.

Q Did you read this paper, before you signed it?

A No, sir.

MR. RADIGAN: The defense rests, if your Honor please. I will withdraw my closing, if your Honor please, and call the father of this boy.

FLORINDO DESPOSITO, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RADIGAN:

Q You are the father of Frank Deposito, the defendant here? A Yes, sir.

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Q How old is your son? A My son is 15 years old,
going on 16. He is born 1889, on the 27th of November.
I have got the paper here from the Board of Health,
in my pocket.

CROSS EXAMINATION BY MR. ISELIN:

Q 1889? A Yes, sir.

Q Has your son been to the public school, Frank?

A Yes, sir.

Q Where? A 68th street.

Q When did he begin to go? A Well, when he was about
over six years; I couldn't tell you exactly.

Q Well, how long ago did he begin to go? A Well,
about a year ago.

Q He began to go? A Well, he didn't want to school
about eight or nine months; I couldn't tell you.

Q Only about eight or nine months? A Yes, sir.

Q And does he work for you? A Yes, sir.

Q And how long has he worked for you? A Well, about a
year and a half.

Q He worked for you? A Yes, sir; he helped me.

MR. RADIGAN: The defendant rests.

MR. ISELIN: Both sides rest, if your Honor
please.

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THE COURT'S CHARGE.

Gentlemen of the Jury,

The defendant is indicted by the Grand Jury for the crime of sodomy, which is carnally knowing another person by the anus.

You have heard the testimony offered by the People, the testimony of the complaining witness, that, on this occasion, he was accosted by this defendant, and taken to this cellar, where the act was perpetrated.

Now, you are forbidden by law to find a conviction in such cases as this unless the testimony of the complaining witness, who is in the nature of an accomplice, even though he be a child, is supported by other testimony, tending to connect the defendant with the commission of the crime.

The child's testimony, which you have heard, is positive, direct and clear, as to what occurred in that cellar. It is positively and directly

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contradicted by the defendant, with the single exception that he admits that the boy did accompany him to the cellar, but states that he was asked by the boy, the complaining witness, to go there; and, also, that he was sent there by his father.

Now, then, the corroboration in this case which the People offer for your consideration is the testimony of Mrs. Howard, who saw this complaining witness go into the house where the cellar is situated, and, because of a remark which she overheard, but which she was not allowed to testify to, under the rules of law, her suspicions were excited, and she came and called this boy's name down in the cellar, and received no answer; and who says that she subsequently saw him, the complaining witness come out of the house in question; and she described his condition as he emerged.

She also stated to you that he immediately made complaint to her telling what had occurred; and that she thereupon took him to his mother, where he repeated his story. It is for you to say when corroboration is offered by the People, corroboration of the complaining witness's story, it is for the jury to say, whether that corroboration is sufficient. That is a

question of fact entirely within your province, gentlemen.

Now, then, if you are satisfied that a witness, whether called for the People or for the defense, has wilfully and deliberately sworn falsely in any one particular, you are at liberty to disregard the entire testimony of that witness.

In other words, if you are satisfied that a witness has deliberately and wilfully intended to deceive you on any point, you may disregard his entire testimony, as being unworthy of belief.

Now, then, in coming to a conclusion as to which of two witnesses tells the truth, it is your duty, gentlemen, to examine all the circumstances of the case, and the antecedents, as far as you know them from the testimony, of the witnesses, the motives that they might have that might control or affect their testimony, and every other circumstance which would enable a just and honest man to come to a fair conclusion upon the question of the veracity or truthfulness of the witness.

You have a right to ask yourselves, why should this boy, of nine years of age, in the few minutes that had elapsed between their coming together on that occasion, and the time that he came out of the cellar, according to the witnesses on both sides, being about five minutes, and certainly not more than ten, you have a right to ask yourselves, is it possible or likely that he could conceive this story, and tell it to this lady, who had been watching his movements, immediately upon coming out of the cellar, after he had been in there apparently on friendly terms with the defendant.

You ^{may} ask yourselves, moreover, what purpose might he have in making this charge, first, to the lady, and next to his mother, and then before the Magistrate, and then before the Grand Jury, and insisting upon it here, what motive of hostility could he have, what motive of enmity.

And, of course, if you find from the evidence in the testimony that any such motive existed, give it fair and due weight in coming to a conclusion as to the reliability of the child's statements.

You have, also, a right to ask what motive the defendant might have for misleading you, in the witness

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chair.

Of course, it goes without saying that the defendant in all such cases as this has a very grave interest in the result of your deliberations.

You have a right to consider that, and ask yourselves how far that might influence him in giving his testimony; that is to say, the danger in which he stands.

Secondly, you can apply the same rule to the other witnesses. You can apply the rule to the mother of the complaining witness. What object could she have in making this charge, and in persisting in it.

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What object could Mrs. Howard have in making this charge, and persisting in it?

And, if you find that there was any motive whatever on the part of any of them to bring this charge against this young man, why take it into careful consideration, as affecting the reliability of each, or any, or all of the witnesses.

Now, the law requires that, upon the trial of a charge like this, and similar charges, there must be actual penetration.

But the law expressly says that, no matter how slight that penetration is, if it exists at all, it constitutes the crime as defined in the Code.

It does not make any difference whether the boy consents to it, or not. That simply makes him an accomplice, if he is old enough to understand the nature of the act; and, necessarily, there is a shade over his testimony, which I have already explained to you; and, therefore, the law requires that it should be corroborated by other testimony, tending to connect the defendant with the commission of the crime.

The People are obliged to make out their case beyond a reasonable doubt. But remember the words

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mean precisely what they say, a doubt based upon a good and sufficient reason, a doubt such as would control you in the important affairs of your daily lives and business, and control your action; not a mere surmise, not an ingenious theory, not a series of comments, of counsel as to the demeanor or the cunning of witnesses; because, unless a witness is absolutely impeached, or there be motive apparent in the case why his testimony should be received with suspicion, you must not infer, because the counsel thinks that the witness is unusually adroit for his age, that he is not telling the truth. Those are matters for you to determine, and not for counsel; and I always caution a jury, especially in cases of this kind, to carefully remember their solemn obligation to decide the case according to the testimony, and according to that alone; not according to the urgency or eloquence of counsel, not according to the opinions even of the Court, but according to their own just view of the testimony, and according to their own good consciences.

The case is in your hands, gentlemen.

(The jury found the defendant guilty as charged in the indictment).

MR. RADIGAN: I move for a new trial, on the ground that the verdict is against the weight of evidence, and against the evidence, and against the law, that is, contrary to the evidence and the law; and upon the exceptions taken upon the record, during the trial; and on the ground that there is a failure of corroboration on the part of the People's case; and on all the grounds mentioned in the Code of Criminal Procedure.

THE COURT: Motion denied.

MR. RADIGAN: Exception.