

Chapter 1

Trials of the First Sexual Revolution

The Progressive Era (1890–1918) created the modern United States. Historian Matthew Guterl has noted that “the United States was transformed from an uncivil, rough-and-tumble backwater to a world power and the very seat of ‘civilization.’”¹ In the decades leading up to World War I, America experienced a series of contradictory impulses. Labor unions made gains in membership and legal status but faced opposition from powerful monopolies and business interests. The era saw the proliferation of settlement houses and immigrant communities but also gave birth to a xenophobic and racist backlash, culminating in the 1910 report from the Dillingham Commission, which purported to offer scientific evidence of the inferiority of new immigrants from Southern and Eastern Europe. The dual nature of the progressivism has vexed historians for decades. Barbara Antoniazzi described the double quality of the period: “Celebrated and condemned by historians of each generation, the age of reform has been praised for its forward-looking spirit and genuinely emancipatory accomplishments as well as criticized for its conservative undertow and class-inflected paternalism.”² The Progressive Era was a time of ongoing, and sometimes explosive, tension between social progressivism and social control.

New York holds a special place in the modernization of the United States during the Progressive Era. According to historian Angela Blake, “Between 1890 and 1924, New York became the nation’s metropolis, the de facto capital of the United States.”³ New York City skyscrapers, the tallest buildings in the world at that time, symbolized the growth and commercial character of the city. Meanwhile, the influx of new immigrants coming into New York City reflected the progressive and conservative contradictions that roiled the nation. The rapid growth of capitalism in the early twentieth

century was due, in part, to the expansion of immigration. John Bodnar's research has shown how "neither immigration nor capitalism as it emerged in the United States would have been possible without each other."⁴ The birth of modern New York City, and of the United States as a whole, was fueled by the synergetic mix of immigration and corporatization.

New immigrants, while powering economic growth in different ways, struck fear in the minds of older American citizens. Guterl observes, "The idyllic Victorian past—a world of presumed pristine neatness and order—had been ruined by the scale and type of immigration."⁵ Between 1880 and 1919, over twenty-three million immigrants came to the United States, and almost three-quarters of them arrived in New York. By 1910, immigrants comprised about 40 percent of the city's population.⁶ In contrast to earlier waves of immigration, most of the new arrivals were from Southern and Eastern Europe, and so-called "native-born whites" and "Anglo-Saxons" viewed them as racially inferior and potentially catastrophic additions to the American population. Although native-born whites placed African Americans at the bottom of the racial hierarchy, they considered Italians, Russians, Hungarians, and other immigrant groups as not quite "white." Although they were white by law, many "old-stock" Americans questioned their morality and fitness for citizenship.⁷

Immigration reshaped the landscape of New York City's boundaries and communities. By 1900, New York City's Lower East Side—bounded by 14th Street, Broadway, the Brooklyn Bridge, and the East River—was the most densely populated place in the world and home to tight-knit Chinese, Jewish, Greek, and Italian groups. In 1910, over 1.25 million Jews from Eastern Europe lived on the Lower East Side.⁸ In the early twentieth century, Harlem housed approximately seventeen thousand Russian Jews. Jewish organizations and benevolent societies played an important role in the city's social and economic life, but to speak of a single "Jewish community" in New York City is overly simplistic.⁹

Likewise, Italian immigrants gathered with others from the same province or village, and therefore settlements were internally divided based on the regional dialects and affiliations. Whereas the Yiddish press worked to bridge some interethnic divisions within the Jewish community, widespread illiteracy among Italians impeded a widening sense of community. The presence of Italian immigrants, however, represented a threat because of their supposed penchant for violence and criminality, especially those from Southern Italy. New York City was a locus for anxiety about Italians. In 1890, Italian immigrants made up about 5 percent of the city's population,

but they were over 10 percent of the population by the 1910s.¹⁰ Despite deep variations within New York City's immigrant groups, native-born whites regarded them as an unwashed mass that threatened to overturn the country's stability and morality.

During these same years, African Americans moved from southern to northern American cities, and the population of African Americans in New York City rose from over twenty-three thousand in 1890 to almost ninety-two thousand in 1910.¹¹ In the early 1900s, African Americans settled in Harlem and, by 1914, approximately fifty thousand were living in the neighborhood.¹² Whites responded to the changing racial makeup of the community with racial hostility. Organizations like the Anglo-Saxon Realty Corporation and the Harlem Property Owners' Improvement Corporation pressured white home owners not to sell their homes to African Americans, enforcing "restricted covenants" in a losing effort to keep Harlem "white."¹³ Race relations in New York City sometimes resulted in mass violence and, in 1900, a race riot erupted the city.¹⁴ The proximate cause of the riot was a white police officer who fought with a man named Arthur Harris after Harris accused the officer of mistreating his common-law wife. The woman was waiting for Harris on a street corner when the officer accused her of soliciting for prostitution. In early twentieth-century New York City, racism and racial tensions explosively combined with changing understandings of gender, sexuality, and public space.

The First Sexual Revolution

In the early twentieth century, norms of gender and sexuality underwent a dramatic shift on diverse fronts. Various social groups confronted and worked to overturn the nineteenth-century image of feminine submissiveness and inherent moral purity. Working-class women adopted new courtship practices that defied earlier norms of feminine propriety and blurred the boundaries between respectable and scandalous behavior. Gay men, lesbians, transgender persons, and other sexual minorities created their own social worlds in New York City's cafés and saloons. Gay men, in fact, were more visible and integrated into city life during the decade preceding World War I than they were during the decades immediately following World War II.¹⁵ During the first two decades of the twentieth century, teenagers and young adults overhauled the standards of sexual conduct governing earlier generations, and they faced and fashioned a cultural landscape fundamentally

different from the one experienced by their parents. Writing about the early years of this cultural shift, historian Kevin White noted that “young men and women gained the freedom to enjoy themselves as never before.”¹⁶ Historian Joanne Reitano stated, “Theaters, movie houses, restaurants, dance halls, and hotels spelled the demise of the Victorian restraint.”¹⁷ Historical research has added layers of complexity to the Victorian-to-modern story of American sexuality, and many have documented how Americans were never really “Victorian” in the way that the stereotype suggests.

As early as the 1970s, historians have cautioned against characterizing the Victorian era (approximately 1840–1900) as a time of sexual puritanism. For example, Kushner argues: “The assumption that most nineteenth-century Americans were puritanical about sex has led, in turn, to a second confusion: that the increased public discussion of sexual matters in the early twentieth century signaled a ‘sexual revolution.’”¹⁸ Victorians’ proscriptions against pornography, masturbation, and nonmarital intimacy revealed a society obsessed with sex, not one that was sexually reticent. This was an essential part of Foucault’s argument in *The History of Sexuality*.¹⁹ More recently, Horowitz hopes that her research “will lay both the concept and the term [Victorian sexuality] to rest.”²⁰ For Horowitz, abortion, prostitution, obscenity, and the emergence of men’s “sporting culture” were flash points in nineteenth-century urban America that strain any characterization of a unanimous Victorian culture or an uncomplicated turn-of-the-century shift.

There is little doubt, however, that those living in the early years of the twentieth century, in small towns and in large cities, witnessed an upheaval in sexual manners and mores. The first sexual revolution popularized and institutionalized modern notions of gender and sexuality. To a great extent, the first sexual revolution was a consequence of large-scale industrialization and urbanization that refigured urban space and changed the economic basis of family life.²¹ Americans had big families in the 1800s as an economic strategy, but the average family size plummeted over the course of the century. In 1800, a typical married couple had over seven children, and, in 1890, an average household had an average of four children.²² Preindustrial labor was divided and managed within families, but the rise of the factory system undermined the place of the family as a singular economic unit. Raising many children no longer held economic advantage. Breakthroughs in science, medicine, and public health decreased infant mortality and the need for families to have many children to maintain economic solvency. The economic place of children in family life was forever altered. A sentimental understanding of children and domesticity took hold of the middle and

upper classes. During industrialization, children became symbols of couples' romantic love instead of additional labor power.²³ Love and romance, once considered secondary (if at all) to the economic and social dimensions of marriage, became central. The idea of "companionate marriage," once controversial in the nineteenth century, was the mainstream by the early twentieth century.²⁴

Changes in families corresponded with new employment opportunities for young adults. Young unmarried working-class women, including many immigrants or the daughters of immigrant parents, heavily populated the female labor force. The rapid growth of corporations and retail markets created sales and clerical positions. Women filled a rising demand for saleswomen, clerks, and stenographers, and many were hired into jobs that had been the exclusive domain of working-class men.²⁵ In 1890, there were 3.6 million women in the paid labor force, representing about 19 percent of the female population. By 1910, almost a quarter of the US female population worked outside the home. In Manhattan and Brooklyn, the total number of women in the workplace almost doubled between 1880 and 1900.²⁶ Income from the rising employment opportunities gave working-class women a growing public presence in New York City, and the arrival of mobile and uprooted populations of immigrants and wage-earning women generated innovative ideas about companionship, romance, marriage, dating, sex, and childrearing.²⁷

Compared to those living in the nineteenth century, city dwellers in the first two decades of the twentieth century had greater time away from work and more money to spend. An expanding leisure culture allowed an unprecedented degree of intermingling among unmarried men and women. Moving picture shows, telephones, automobiles, amusement parks, and new dance crazes set the tone for an emerging ethos that celebrated sexual expression set free from the exigencies of childbirth and domesticity. Major American cities made enormous investments in entertainment and recreation, creating urban architecture to cradle new subcultures, sexual norms, practices, and identities.²⁸ New amusements such as movie theaters and dance halls gave young city dwellers opportunities to socialize and form attachments away from parents and guardians.²⁹ Movies captured the imaginations of thousands of New Yorkers. From 1900 to 1908 the number of motion picture theaters in New York City grew from fifty to five hundred, and twenty to forty thousand New Yorkers attended the theaters daily.³¹ *The Outlook* observed in 1914, "There is no doubt that the motion-picture show is America's most popular form of recreation."³⁰

Movies were a popular form of cheap entertainment in New York City, but dancing was extraordinarily attractive to young women. Historian Kathy Peiss observed, "Of all the amusements that bedazzled the single working woman, dancing proved to be her greatest passion."³² In 1911, New York City had over five hundred registered dance halls, and it appeared to those living during the era that a "storm of dance madness has come over the young people of New York."³³ Civic activists portrayed dance halls as a moral threat because it placed young men and women in dangerous proximity. They criticized popular dance styles—and the accompanying ragtime music—as promoting immorality. New York reformer Julia Schoenfeld reported in 1914 that she "found that vulgar dancing exists everywhere, and the 'spiel,' a form of dancing requiring much twirling and twisting, and one that particularly causes sexual excitement, is popular in all."³⁴ "Spieling," where the male partner hugs and twirls his female partner across the dance floor, was a form of "tough dancing" popular among immigrants and the working class. Civic activists, anti-vice societies, and moral reform organizations viewed the spaces that catered to these intimate dance styles as dens of iniquity. In 1913, for example, a grand jury presented findings to Justice Edward Swann "condemning the turkey trot and kindred dances." Swann accepted the grand jury's presentment, noting that "Rome's downfall was due to the degenerate nature of its dances" and complaining that "even the moving pictures show these dances in their most exaggerated forms."³⁵

The alleged threat of "tango pirates" loomed over the social dancing scene in New York City. In a gender inversion of the "gold digger" threat that would alarm Americans in the 1920s and 1930s, tango pirates were lower-class men who exploited the trust of, and lived off of the generosity of, rich women. New York newspapers described tango pirates as using cocaine to ensnare unsuspecting victims who patronized cafés. One New York district attorney described them as "ignorant, ill-born fellows who have acquired a mere veneer of good manners and small talk."³⁶ The fear of the tango was not unique to New York City. In 1914, at the height of the tango pirate scare, Massachusetts lawmakers considered outlawing the dance.³⁷

Dancing as an entertainment spectacle also drew intense criticism. In the Dance of the Seven Veils, a woman adorned in gauzy fabric interprets a Biblical scene. The dancer uses her body to express sensuality as she removes her clothing little by little during the course of the routine. The dance was inspired by Oscar Wilde's play and Richard Strauss's opera describing the young woman who presented John the Baptist's head to Herod. The dance was supposed to be carnal and spiritual, seductive and classical. Salome danc-

ers were a common feature of early twentieth-century vaudeville, circuses, and dime museums.³⁸ Despite its claims to respectability in reproducing a Bible story, the “Salome craze” that swept popular and high-brow theater from 1907 to 1908 drew criticism for its supposed promotion of lust and lasciviousness.³⁹ In 1908, a physician warned that the “intense, abnormal passion stimulated by the dancers must reach across the footlights and take hold of the nervous systems of hysterical women in the audience.”⁴⁰ Salome dances were placed under observation by the New York City police and were, for a time, banned in New Jersey and Brooklyn.⁴¹

The transition from dancing as an act of degeneracy to dancing as a form of healthy exercise occurred in the early decades of the twentieth century. It is not an exaggeration to say that Irene and Vernon Castle, a husband-wife dancing team, were almost entirely responsible for the revived respectability of close partner dancing in the years before World War I.⁴² The Castles acted as trendsetters by coopting and “taming” African American dance styles and making them fashionable among the middle and upper classes. They owned a New York City club that became, according to their biographer, “*the* hotspot for high society and tourists alike.”⁴³ In their best-selling dance instruction book they compared dance favorably to other amusements, like movies: “Surely there cannot be as great moral danger in dancing as there is in sitting huddled close in the darkness of a sensational moving-picture show or in following with feverish interest the suggestive sex problem dramas.”⁴⁴ Although the Castles defended partner dancing against its moral critics, they drew a sharp boundary between the refined steps that they taught and popular dances like the Turkey Trot, Grizzly Bear, and Bunny Hug. The Castles carved a space of respectability for modern dance, but the dances and the dance halls popular among working-class and immigrant communities remained morally suspect well past the 1920s.⁴⁵

Hand in hand with movies and dancing, new housing opportunities encouraged women’s independence and sexual autonomy. At the end of the nineteenth century, approximately half of the unmarried women in the city lived with private families.⁴⁶ In 1900, the vast majority of wage-earning women in New York were single and living outside the confines of parents and guardians.⁴⁷ During these years, boardinghouses and large commercial lodgings sprang up in major urban centers to give women some escape from familial constraints. Proponents of boardinghouses argued that they helped preserve female sexual purity by replicating the domesticating influences of the family dwelling, including their offerings of religious service, affordable lodging, and respectable leisure activities. The Young Women’s Christian

Association (YWCA) and other charitable agencies envisioned themselves as recreating a protected domestic space within the maelstrom of city life.⁴⁸ They catered to rural women perceived as adrift in New York City, but they were less charitable to immigrants, racial minorities, and women who did not fit their profile of respectability.⁴⁹ The labor of immigrant women, however, worked to inadvertently protect the respectability of so-called native-born whites. Lynn Weiner notes, “Many of the homes barred domestic servants, laundry workers, black women, and factory operatives, reflecting their concern with the white native-born women dispossessed of their status by the need or desire to work. For the native-born women, the homes acted as a buffer between the urban environment and the domestic ideology. Although they worked for a living, they still lived ‘at home,’ and so their bodies, reputations, and status remained protected.”⁵⁰

“Furnished rooms” were another housing option for independent wage-earners in the city, but women who wanted to live in these accommodations often faced suspicions about their morals, and so landlords preferred to rent to men. Although the “furnished room districts” of major US cities offered wage-earning women independence and freedom, members of the middle and upper classes viewed them as notorious hotbeds of immorality for that very reason.⁵¹ Like the distinction between the supposedly respectable dances taught by the Castles and the supposedly degenerate dancing found in popular dance halls, the distinction between acceptable and unacceptable housing for working women had more to do with class, race, and ethnicity than the inherent features of the room or building.

In this historical context, middle- and upper-class civic activists maintained older standards of sexual respectability, but working-class men and women in early twentieth-century New York did not view virginity as the definitive sign of moral worth and did not see premarital intercourse as akin to prostitution.⁵² Moreover, many working-class women cultivated relationships with men where they traded sexual favors for gifts or an evening’s entertainment. Although upper- and middle-class reformers saw little difference between prostitutes and so-called “charity girls,” the practice of “treating” changed the working-class sexual economy. Historian Elizabeth Clement writes, “Treating emerged as an intermediate category, a line somewhere between the morally gray area between prostitution and the premarital intercourse that often occurred in courtship.”⁵³ Working-class women refashioned the economics of courtship, and they challenged traditional codes of sexual morality within the constraints imposed by their class position and immigrant status.

Criminal Law and Sexual Counterrevolution

The early twentieth-century United States witnessed sexual revolution, but it also experienced state-sponsored sexual repression and moral reform. The sexual revolution encapsulates the tension between social control and social justice characteristic of the era. Criminal law enforcement counteracted the sexual revolution in two main ways: vulnerable populations were overexposed to the harshest elements of criminal law enforcement, and they were underexposed to its justice-producing potential. Counter to the image of sexual revolution, historical accounts show how police and prosecutors enforced sex crime laws in ways that hurt the working class, women, gays, and racial and ethnic minorities. Progressive-Era courts and police were instruments of social control that enforced a version of white middle-class sexual morality on immigrants and workers.⁵⁴

The criminal justice system overexposed racial and ethnic minorities, women, and men who departed from a white middle-class ideal to the most coercive aspects of the criminal justice system. Racist and anti-immigrant attitudes were entrenched in the upper leadership of the New York City police force. William McAdoo, who served as the New York City police commissioner from 1904 to 1905, said, "One of the most troublesome and dangerous characters with which the police have to deal is the Tenderloin type of negro," whom he described as violent gamblers who go "heavily armed."⁵⁵ In 1905, he formed a five-person "Italian Squad" designed to root out the influence of the Italian mafia, or what was called "the Black Hand."⁵⁶ McAdoo's successor, Theodore Bingham, greatly increased the size of the Italian Squad and claimed in 1908 that Italians committed at least 20 percent of all crime in New York City.⁵⁷ Bingham also asserted that Jews committed over half the crime in New York City, a comment for which he later apologized due to pressure from Jewish community leaders.⁵⁸ McAdoo and Bingham counted among the many native-born whites in New York's criminal justice system who conflated foreignness and criminality.

While law enforcement overexposed vulnerable groups to the coercive dimension of the criminal justice system—raids, arrests, and surveillance—it underexposed the same populations to the justice-enabling force of the law. Women, in particular, faced a series of barriers to justice. Women had a limited presence in New York's criminal justice system. Maude Miner became New York's first female probation officer in 1906.⁵⁹ In 1912, Isabella Goodwin was appointed as the first woman detective in New York City.⁶⁰ Jean Norris was the first woman appointed as magistrate judge in 1920.⁶¹

Women had made gains in the legal world, especially after World War I,⁶² but men had overwhelming power in New York's criminal justice system, and women told their stories in court in front of male attorneys, an all-male jury, and a male judge.

Women also faced a series of challenges embedded in sex crime case law and its prevailing interpretations by judges and jurors. Rape, seduction, and forced prostitution prosecutions effectively required victims to fiercely resist their attackers. New York's rape law had explicit criteria that the victim resist her attacker, and the seduction law required complainants to be "of previous chaste character." Defense attorneys challenged women complainants about their prior sexual experiences and thereby assaulted their reputation, morality, and respectability when they sat in the witness chair. To embrace the image of the early twentieth-century as a time of sexual revolution ignores the ways in which the criminal justice system responded to and processed sex crime allegations.

The Enforcement of Sex Crime Laws

New Yorkers accused of sex crimes traveled through a complicated bureaucratic and political maze, beginning with police and ending with a possible prison sentence. New York City police conducted investigations that led to arrests, but most sex crime cases in the early twentieth century originated with a complaint made by a private citizen or member of a legal aid society. From there, police arrested the suspect or suspects, often in the presence of the victim and (if necessary) an interpreter.

Municipal police officers carried out the vast majority of arrest in New York City, but agents from preventative societies exercised lawful arrest power for specific problems and populations. For example, representatives from the Society for the Prevention of Cruelty to Children (SPCC) had police power in apprehending suspects accused of crimes against minors. The SPCC was one of a handful of important crime preventative societies in New York City, including the American Society for the Prevention of Cruelty to Animals (ASPCA), the Society for the Prevention of Crime (SPC), the City Vigilance League (CVL), the Committee of Fourteen, and the New Society for the Suppression of Vice. As historian Gilfoyle explains, "Preventative societies were major vehicles of power by which purity-minded New Yorkers redefined appropriate sexual behavior, and, most importantly, transformed sexual politics in New York."⁶³ Reform societies acted as

enforcers of a white middle- and upper-class version of sexual and social respectability.

New York anti-crime societies had a vexed relationship with local police. Sometimes the two groups worked hand in hand, but, during times of municipal reform or anti-Tammany Hall activism, the crime societies regarded police corruption as part of the city's dysfunction. By 1900, Reverend Charles Parkhurst presided over the City Vigilance League, which took fierce aim at the Tammany Hall Democratic machine and a system of graft and corruption entrenched among police.⁶⁴ Parkhurst wrote, "People are even yet sometimes expressing surprise that I have so little admiration and respect for our police force! I believe that from top down, with some splendid exceptions, they are the dirtiest, crookedest, and ugliest lot of men ever combined in semimilitary array outside of Japan and Turkey."⁶⁵ In response to critics like Parkhurst, New York City cycled through waves of municipal police reform. The first major effort was the 1894 Lexow Committee, commissioned by New York senator Clarence Lexow and led by Reverend Parkhurst. The committee examined over six hundred witnesses and uncovered evidence of rampant police corruption, extortion, bribery, and brutal force. The instituted reforms aimed to make the criminal justice system less prone to political influence, but police brutality and political corruption persisted.⁶⁶

After arrest, suspected criminals were held in detention rooms or "pens" until they could be arraigned in magistrate's courts. The magistrate's court, formerly known as the police court, played an important role in the New York criminal justice system. In 1911, New York Supreme Court justice Alfred Page described it as "the court of first instance for all grades of criminal offenses."⁶⁷ As the first face of justice from crimes ranging from speeding to homicide, magistrates saw a cross-section of New York life. A majority of the defendants, however, were poor immigrants. Given the disproportionate number of immigrants in the magistrate's court, observers viewed the courts as important vehicles of ethnic assimilation.⁶⁸ A former chief city magistrate described the court as "the greatest educational institution in the US."⁶⁹ Former New York City police chief Theodore Bingham declared that "it is in the police court and in the lower civil courts that the millions of ignorant foreigners gain their first and, for the most part, only impressions of our government and our boasted liberty."⁷⁰ In this way, the court system was a major, albeit coercive, force of Americanization. By 1920, there were thirty-one magistrate's courts in New York City processing about two hundred thousand arraignments a year.

Accused criminals had the right to produce witnesses on their behalf, but court reformers described the arraignment process as harsh and alienating. In 1912, Robert Ferrari, a private lawyer and criminology lecturer at New York University, described the typical scene: "The immigrant is at the prisoner's bar before the Police Court Justice. He is bewildered, lost. He has no friends, no one to aid him. He is not represented by counsel."⁷¹ Although defendants could call witnesses in their defense, they were largely powerless. The magistrate's court processed so many cases, and such a variety of cases, that magistrates rarely had an opportunity to delve into the intricacies of any single circumstance.

The architecture of the typical magistrate's courthouse contributed to the psychological and physical estrangement experienced by so many accused criminals. Before court reforms in 1910, a wide space separated the defendant from the magistrate. The prisoner was often kept in the back of the court, unaware of the proceedings until the magistrate made a decision. Police and other witnesses were separated from the magistrate by a few inches, and the crime was discussed in low tones. William McAdoo, who served as New York City's chief magistrate from 1910 to 1930, said, "There was an air of privacy about the court."⁷² The audience was separated from the bar by a ten-foot-tall wire screen. Policemen, lawyers, and court stenographers stood on a small platform in front of the judge's bench called a "bridge."⁷³ Defendants' alienation was reinforced by their physical separation from the court's decision-makers. The prisoner was placed in the back while the lawyers and magistrate discussed and negotiated his or her fate.

A magistrate's first task was to evaluate the seriousness of the charge facing the suspect. For minor offenses such as public drunkenness, a sanitary code violation, disorderly conduct, or violation of the Sabbath law, magistrates had complete power to try the case, determine guilt, and impose a sentence. For more serious crimes, magistrates assessed if there was enough evidence against the suspect to produce an indictment. The magistrate had the power to discharge the case if he judged the evidence as insufficient. In some instances, if a suspect faced a felony trial, the district attorney could override the magistrate and submit the indictment to the grand jury. In most instances, the magistrate had power (if there was enough evidence against the suspect) to prepare an indictment for either the grand jury of the Court of Special Sessions (for misdemeanors) or the grand jury for the Court of General Sessions (for felonies).

After a magistrate issued an indictment, a representative from the district attorney's office, typically an assistant district attorney (ADA), presented grand jurors with evidence of the defendant's crime. Grand juries did not render a judgment of guilt or innocence, but they evaluated whether or not the evidence presented in the indictment was sufficiently compelling to go before a jury. Twenty-three men served on the grand jury, and members were drawn from the same jury pool as regular jurors. Because their service could last over a month (with some serving for multiple years) jurors tended to be wealthy businessmen.⁷⁴ Therefore, an early stage of the criminal justice system was controlled by wealthy white men who, with precious few exceptions, had more resources and privileges than the accused prisoner.

In fact, the majority of arrested criminals in early twentieth-century New York City were immigrants. In 1910, the imprisonment rate for foreign-born immigrants was more than double the rate for native-born whites. Immigrants coped with the criminal justice system in multiple ways.⁷⁵ Legal aid societies provided support for immigrants who were poor and could not speak English, but other defendants secured legal counsel with the help of "runners" or "steerers." Runners and steerers were paid by trial attorneys to solicit plaintiffs in civil cases and defendants in criminal cases. In the realm of civil law, runners practiced "ambulance chasing."⁷⁶ They used police accident reports to locate victims at their home and then persuade them to use their services. In the realm of criminal law, runners loitered around jails and bail bond vendors looking for people who needed legal assistance. They promised freedom to those facing criminal charges as long as the suspects contacted the attorney listed on their referral cards and paid a requisite fee. Runners also told suspects that a long prison sentence awaited them if they failed to follow their advice. Runners often worked in tandem with bail bondsmen, corrupt police, and court reporters to gain clients.⁷⁷ After they secured legal representation, persons charged with felonies had their day in court at New York's Court of General Sessions.

The Court of General Sessions conducted felony trials in the Tweed Courthouse in lower Manhattan, about one-half mile from the current location of the World Trade Center Freedom Tower. When it closed in 1962, the Court of General Sessions was the oldest American legal institution. The court was created in 1683 and met four times a year. It was known as the Court of Quarterly Sessions in the nineteenth century and it had jurisdiction over civil and criminal matters. Records show one of the earliest cases held in the court was a man charged with burglary. He was found guilty,

a “B” was branded on his forehead, and he was given eleven lashes.⁷⁸ Over the course of the nineteenth century, courts largely abandoned sentences of physical punishment in lieu of prison terms and, by the early twentieth century, had the common features of a modern US criminal trial.

Criminal trials in the early twentieth century resemble contemporary US trials in their basic structure. A Court of General Sessions trial began with jury selection and opening statements from the prosecutor and the defense. The prosecution had the privilege of calling the first witnesses. In the trials examined in this book, the first witness was often the alleged victim, or “complainant,” and sometimes the attorneys and judge referred to a female complainant as a “prosecutrix.” After the prosecutor questioned each individual (direct examination), the defense attorney offered their own line of questioning (cross-examination). After examining the complainant, prosecutors often called the arresting officer, witnesses, and relatives of the complainant. Defense attorneys typically began their case with the direct examination of the arresting officer or officers and finished their case with an examination of the accused. After the defense “rested” (finished their witness questioning), prosecutors had the opportunity for a rebuttal, allowing them to call new witnesses or recall old witnesses. Defense attorneys, in turn, had a chance to give a “sur-rebuttal” in response to the prosecutor. After the final individual left the witness stand, the prosecuting attorney and the defense attorney gave closing statements summarizing the important arguments for each respective side. Judges presiding over criminal trials read to jurors a series of instructions about the concept of reasonable doubt and the key factual issues to which they should ignore or pay attention.

Trials in the Court of General Sessions required twelve jurors. New York State mandated jurors to be English-speaking American males between the ages of twenty-one and seventy years old who owned at least \$250 worth of property.⁷⁹ The commissioner of jurors maintained the pool of eligible men who could serve, and in 1902, the trial juror list had about six thousand names. Despite criteria designed to produce an educated jury pool, critics claimed that too many jurors were foreign-born or middle or lower middle class. Robert Ferrari asked, “Do you find any doctors upon the jury, any engineers, or any teachers, architects, contractors, reporters, editors? The people who serve on the jury are on a dead level of mental inferiority. As I have already said, they are small shop keepers, and clerks, with very little intelligence, very little education, very little learning, and very little experience of life.”⁸⁰ A former juror complained, “The majority of our most intelligent citizens seldom serve,” and juries were populated by “foreigners

unacquainted with our language and ignorant natives.”⁸¹ Laments about the quality of New York jurors reflect anxieties about race and social class rampant among middle- and upper-class whites in the early twentieth century.

Jurors had a formal role as neutral fact-finders, but they also had understandings of crime, police, men, women, and sex that shaped how they interpreted the facts of a case. Often drawn from the same social milieu as the defendants and complainants, jurors represented their home and neighborhood as much as the state. A New York City prosecutor complained in 1908 that jurors “want to be not only jurors, but district attorney, counsel for the defendant, expert witness, and judge into the bargain.”⁸² Unlike contemporary juries, jurors in early twentieth-century courts routinely interrupted the flow of cross-examination to ask questions that were neither solicited by attorneys nor screened by judges. Vested with the responsibility of being neutral fact-finders, jurors frequently stepped out of their passive role to shape trial narratives.⁸³ Besides their verdicts, two types of evidence reveal jurors’ legal consciousness: questions they asked witnesses during the trial and questions they asked the judge during their deliberations. These practices suggest jurors played a more active role in criminal trials than many scholars have assumed. Counter to the view of jurors as a passive audience that evaluates competing stories, jurors in the early twentieth century helped create the stories that witnesses and attorneys told to them.

Jurors often asked questions that seemed to alter prosecution or defense strategies and prompt judges to intervene and offer a different or more substantial explanation of the crime or the law. The legal sphere, as a broker of sexual respectability, was not just a place for the imposition of the law from above, but a place where judges, defendants, complainants, and jurors actively negotiated the terms and parameters of acceptable sex and sociality. Trial transcripts of alleged seducers, rapists, pimps, and sodomites reveal the dynamics of these negotiation processes.