

START

2100

CASE

CASE #2100

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

THE PEOPLE OF THE STATE OF NEW YORK, :

-against-

HARRY NEWMAN.

Before:

: HON. THOMAS F. MULQUEEN, J.,
: And a Jury.

New York, September 20th, 1915.

The defendant is indicted for rape in the first degree.

Indictment filed June 1st, 1915.

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

2552

For the People: MILLIARD H. ELLISON, ESQ., Assistant District
Attorney.

For the defendant: JACOB STIEFEL, ESQ.

(A jury is duly impaneled and sworn.)

B E A T R I C E H U N T E R, called as a witness, but not
sworn, states as follows:

BY THE COURT:

Q What is your name? A Beatrice Jane Hunter.

Q Where do you live, Beatrice? A I don't know the name of
the street.

Q Have you got a Papa and a Mamma? A (Witness nods yes.)

Q Do you know the number of the house? A (No answer)

Q How old are you? A Six years old.

Q When will your next birthday be? A I don't know what
birthday.

CASE #2100

Q Did you ever have a birthday party? A (The witness nods
no.)

Q So you do not know when your birthday will be? A (Witness
nods no).

Q Do you know that you are six? A (Witness nods yes).

BY MR. ELLISON:

Q Beatrice, did you move into a new home? A Yes, ma'am.

Q Where did you live before you moved into the new home?

A (No answer.)

Q Do you know this boy Harry Newman (indicating)? A Yes,
ma'am.

Q When did you first see him, the first time you saw him?

A I didn't see him before; I seen him walk right in the hall.

Q Now, tell everything that this boy, Harry Newman, did and
said to you; did he say anything to you in the hall? A He
said to me first he bet he can make me laugh, and after he lifted
up my clothes and unbuttoned my drawers.

Q Anyhthing else that you remember? A And he stuck his thing
in me.

Q What did you do? A My Mamma came ing out and Mrs.
Cameron.

Q Where did your Mamma and Mrs. Cameron come from? A Came
from the restaurant. On this here side is a hall, indicating
left side, and on this side is a restaurant, indicating right
side.

Q Did your Mamma and Mrs. Cameron come into the hallway

CASE #2100

where you were? A No; she came from the restaurant. The restaurant was right on this here side, and the hall is right next to it.

Q You were in the hall, weren't you? A Yes, playing.

Q Who were you in the hall with? A With Eunice.

Q With anybody else? A With nobody else.

Q Was Harry Newman there when your mother came in? A Yes, Ma'am.

Q Did they get anybody? A The policeman.

Q What did the policeman do when he came? A He took him to jail.

MR. ELLISON: That is all.

CROSS EXAMINATION BY MR. STIEFEL:

Q When did you first see him, Harry Newman? A At first I did not see him, but he only walked in the hall.

Q Where were you when he walked into the hall? A I was playing in the hall.

Q You were playing with whom? A With this little girl, her name is Eunice.

Q Did he see you play in the hall with Eunice, this Harry Newman? A No, sir.

Q He just walked in the hall? A Yes, sir.

Q Were you sitting near the entrance to the hall, or was Eunice sitting there? A We were only playing house in the hall, standing up.

Q Where were you, in the corner of the hall? A Yes.

101

CASE #2100

Q He went over to you, without saying anything to you? A No; he said, "I bet I can make you laugh."

Q When he said he could make you laugh was Eunice still there? A Yes, Eunice was still there. I told her to go and tell my Mamma.

Q Now, do you know how long after that your Mamma came in? A No, only about a few minutes.

Q Where was your Mamma, do you know? A My Mamma was in the restaurant, talking to somebody.

Q Where was the restaurant? A The restaurant?

Q From where you were in the hall? A The restaurant is right here on this side, and the hall was right here next to the restaurant.

Q So the restaurant is next door to where you were in the hallway, is that right? A Yes.

Q You say it took a few minutes for your Mamma to come from the restaurant into the hall? A Yes, ma'am.

Q While Eunice went in to call your Mamma, what did Harry Newman do after he said he could make you laugh? A He didn't do nothing else.

Q What did he say after that? A My Mamma came out, and Mrs. Cameron held her hand that way, and my Mamma held on to his coat.

Q Before your Mamma and Mrs. Cameron came into the hallway and after Harry Newman said he could make you laugh, what did he do? A He did not do nothing else.

CASE #2100

5
Q After he said to you that he would make you laugh, did he do anything else to you? A No, ma'am.

MR. STIEFEL: Your Honor can appreciate the tender age of the child. She testified on her direct to something different.

THE COURT: The jury will know what weight to give to her story.

Q On the laugh trial did you say that you were playing outside with another girl and Eunice? A Yes.

Q And this Harry Newman came along the street and he took you by the arm? A Yes, ma'am.

Q He took you in the hall? A No, he did not take me in the hall. I was walking in the hall.

Q That is what you said on the last trial? A Yes.

Q Is that the truth? A Yes, ma'am.

Q And then you were walking in the hall after you were playing with the other girl, and this Harry Newman came? A Yes, ma'am.

BY MR. ELLISON:

Q How large a girl is Eunice? Is she smaller than you?

A Before last year she was four; now she is five.

WILLIAM BANKS, (249 East 33rd street) a witness called on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELLISON:

Q What is your occupation? A Porter.

CASE #2100

6

Q By whom are you employed? A The New York Central and Hudson River Railroad.

Q How long have you worked with the New York Central Railroad?
A Six years.

Q Were you working for them on the afternoon of May 6th, 1915?
A Yes, sir.

Q Where were you working for the New York Central on that afternoon? A I was standing at the corridor.

Q Where? A 120 East 50th street.

Q Do you know the premises 125 East 50th street? A Yes, sir, right opposite, across the street.

Q What were you doing at 120 East 50th street for the New York Central? A I was supposed to patrol there and watch in that corridor to see if any strangers comes in there.

Q While you were so employed there and on that afternoon at any time did you see this little girl, Beatrice Hunter? A I don't understand you.

Q Did you see little Beatrice Hunter that afternoon? A Yes, sir, I seen her playing across the way.

Q Where was she playing? A She was playing in front of her own door.

Q What door? A 125.

Q At any time that afternoon did you see this defendant Harry Newman? A Yes, sir.

Q Where was he when you first saw him? A I saw him about 10 feet away, going west from Lexington avenue.

CASE #2100

Q What if anything did you see this defendant doing there?

A I seen him take the little girl by the arm and fetch her in this hallway.

Q What little girl? A The little Hunter girl, I believe.

Q Into what hallway did he take her? A 125.

Q East 50th street? A Yes, sir.

Q That is in the County of New York? A Yes, sir.

Q When you saw him take her into the hallway, what did you do? A I watched him going in there and he tried the inside vestibule door which he could not open. The outside vestibule door, one-half is open and the other is closed, so he took the little girl by the hand and drew her back towards the wall, which drew my suspicion.

MR. STIEFEL: I move to strike that out.

THE COURT: strike that out.

Q What did you do then? A Then I watched her a second or two, and I listened and I heard a noise, at which, to Mrs. Hunter and the other woman who were standing at the restaurant doorway, right outside the hallway, I pointed to her.

Q Where was the restaurant in which Mrs. Hunter, the mother was, with reference to that hallway? A Right next door to it, right between the railing. There is a railing between the doorway and the restaurant.

Q What did you do when you saw the mother there? A I pointed to her to come out.

1912
CASE #2100

Q Did she come out? A She did not; she thought I was mashing, or something else.

Q When she did not come out what did you do then? A I went out and went across the street and called her out, at which she rushed out and rushed into the hallway.

Q After she rushed into the hallway, what did you do? A I did not see any more. I went over to my own work.

Q Did you see anything more of her that day? A No, sir.

Q Did you see the police officer come along? A I seen the officer with the prisoner about ten minutes after or five minutes after, - I ain't sure. I had no time.

Q You never had any trouble with this defendant in your life, did you? A No, sir.

Q Did you ever know him before that day? A No.

Q Did you ever know Mrs. Hunter and the little girl? A No, just by seeing them; they lived across the street.

Q They lived opposite where you worked? A Yes.

Q For the six years you have worked for the New York Central Railroad, did you always work at that same place? A No, sir, I worked there for the last two years.

CROSS EXAMINATION BY MR. STIEFEL:

Q Do you know Mrs. Hunter? A No, sir, not to speak to.

Q Did you see her there on any other occasion in 50th street, prior to the date you have testified to? A I have seen her sitting out in the restaurant doorway.

CASE #2100

9
Q Did you know her husband? A I have known him by sight.

Q For how long a time did you know either she or her husband? A I don't know; I know that he works for the New York Central.

Q Did you know this child to be a child of Mrs. Hunter that went into the hallway? A I could not say, but she claimed so.

Q Did you know that this child prior to the 6th of May, 1915, was a child of Mrs. Hunter? A She claims it as a child of hers.

Q Did you know before that? A No, sir, I did not.

Q So you want this jury to understand that you did not know whether or not this stand that was on the stand was the child of Mrs. Hunter before the 6th of May, - is that right?

THE COURT: do you understand the question?

BY THE COURT:

Q When you saw that girl in the hallway, as you say, did you know who her mother was? A Yes, sir.

BY MR. STEEFEL:

Q Who told you who her mother was? A She is always been with the child, and there is a party that works with me on the building told me it was.

Q Who is the party in the building that told you? A The porter.

Q What is his name? A Gunther.

Q Is he still working there? A Goodie, is his name.

Q Is he still working there? A Yes, sir.

Q What is his name? A I could not tell you that.

CASE #2100

Q What does he do with the New York Central? A He is a porter.

Q Goodie was the one who told you that this little girl was the child of Mrs. Hunter? A Yes, sir.

THE COURT: He said he saw the child with the mother.

Q When did Goodie tell you before the 6th of May that this child was the child of Mrs. Hunter?

MR. ELLISON: Objected to as immaterial.

THE COURT: Sustained.

MR. STIEFEL: Exception.

Q When was the first time that you noticed this defendant on the afternoon of the 6th of May? A About five minutes before it occurred.

Q When, for the first time; what time was it? What time did it occur? A About five minutes of four.

Q What were you doing at the time you noticed this defendant? A I was standing near the vestibule of the corridor of the doorway.

Q Were you talking with any one? A Yes, sir.

Q With whom? A With Mr. Goodie.

Q Was Mr. Goodie with you for five minutes? A Yes, sir.

Q Did you say anything to Mr. Goodie regarding the defendant and this child? A Yes, sir.

Q Did you state that to the District Attorney in the Magistrate's Court? A No, sir, I did not say that.

Q Did you state that to the District Attorney who has charge

CASE #2100

of this case?

THE COURT: I exclude that as immaterial, whether he did or not.

MR. STIEFEL: Exception.

THE COURT: If you mean to show he ever made statements which differ from or contradict the statements he made now you can do so.

Q You did not testify to that at the last trial, did you?

MR. ELLISON: Objected to.

Allowed.

A No, sir.

Q Why did you hide that fact from the last trial?

MR. ELLISON: Objected to, the characterization.

THE COURT: That is excluded.

Objection sustained. Exception.

Q Why did you not tell the District Attorney about that at the last trial, that Mr. Goodie was present with you?

MR. ELLISON: Objected to as immaterial.

THE COURT: Objection sustained. Exception taken.

Q Now, what did you see the defendant first do when you noticed him on 50th street? A I seen him come along the street and take the little girl by the hand and fetch her into the vestibule of 125.

Q In which direction was this defendant walking? A He was walking west from Lexington avenue.

Q Did you see him on Lexington avenue? A No, sir. I did

CASE #2100

not see him on Lexington avenue; he was walking from that direction.

Q You noticed him on 50th street? A Yes.

Q What time was that? A I had no watch to tell you the exact time; I could not say.

Q About? A About twelve minutes to four.

Q You saw him on the corner of Lexington avenue and 50th street? A No, sir.

Q Where did you see him? A I seen him this side of Lexington avenue, coming around.

Q When you say this side of Lexington avenue, between what streets was he? A Lexington avenue and Park avenue.

Q He was on 50th street? A Yes.

Q On what side of the street did you notice this defendant on 50th street? A I was on the south side and he was on the north side.

Q How far is the premises 125 from Lexington avenue? A Which I could not say; I guess it is one lot of 100 feet off from Lexington avenue.

Q You noticed this defendant at twelve minutes of four?

A Yes, sir, about that time.

Q You noticed this defendant go into the vestibule at 12 minutes of 4? A No, sir, I did not.

Q What time did you see this defendant go in with the child?

A It was about ten minutes of four.

Q So it took about five minutes to walk from the corner of

1022

CASE #2100

50th street, a hundred feet on 50th street? A No, I did not
say five minutes, I said two minutes.

Q Now, the child was playing on the sidewalk? A Yes, sir.

Q With how many children? A There was one, and her little
playmate.

Q What did you see this defendant do while she was playing
there? A They were both playing; one was running away from the
other one, and this little girl was in front of her door, looking
for this other little girl, when he came along.

Q Go on. A Then he took her by the hand and went into the
vestibule with her, just on the level, one step from the street.

Q Then he took her by the hand, he walked her to the entrance
of the premises 125 East 50th street? A Yes, sir.

Q What next did you see, if anything? A I seen him try the
knob of the inside door which was locked. He could not get in.

Q What else did you see him do? A I seen him take the little
girl by the arms and push her back to the wall, which was be-
hind this door.

Q Up to that time you knew this child to be the child of Mrs.
Hunter? A I didn't know who this man was, though, Mr. Newman.

BY THE COURT:

Q Did you know before that time that this was the child of
Mrs. Hunter? A I don't know yet, but they say so.

Q But did you believe it? A I believe it is her daughter.

Q Did you believe it at that time? A Yes, sir.

BY MR. STIEFEL:

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

CASE #2100

1023

Q Father of a family? A No, sir, I got no family.

Q You saw this defendant take the child, - you were standing on the opposite side with Goodie? A Yes.

Q Why weren't you man enough to go into the hallway after this defendant, if you saw this thing occur? A I didn't know at first whether he knew the child or not. It is a furnished room house; I didn't know who belonged in the house.

Q Why did you point over to the restaurant where Mrs. Hunter was? A To call her attention.

Q Why didn't you go over immediately to the hallway or vestibule for the purpose of catching this defendant? A Because I didn't know what occurred.

THE COURT: I will exclude that as repetition. He has already told you that.

Q You say you did not know what occurred: why did you notify her by way of your fingers, in telling Mrs. Hunter something in that regard, if you didn't know what occurred? A At that time I didn't know what occurred; because I noticed there was something wrong when he was in that vestibule door.

Q Then, if you noticed something wrong why did you not, as a married man should have done, have gone over to the hallway to find out?

MR. ELLISON: Objected to.

THE COURT: sustained.

Exception taken.

Q Why, then did you not go over to the vestibule door?

CASE #2100

1024

MR. ELLISON: Objected to.

THE COURT: Objection sustained.

Exception.

Q How long before you notified Mrs. Hunter was this defendant with this girl in the hallway? A About two minutes.

Q Where was Mrs. Hunter at the time that you saw this defendant take the child in the vestibule? A She was standing at the door which was closed. It was alongside the doorway.

Q Standing at the restaurant door? A Yes.

Q In the doorway? A Yes, sir, in the doorway.

Q Was she looking in the direction where her child was playing?
A She was looking directly opposite, where I was.

Q She was outside of the door of the restaurant? A Inside of the door.

Q And you were waiting there two minutes before you notified Mrs. Hunter? A Two minutes.

Q How soon after you notified or beckoned to Mrs. Hunter did she come out of the restaurant? A She thought I was mashing her first.

MR. STIEFEL: I move to strike out what she thought.

THE COURT: strike it out.

Q How soon after you had motioned or beckoned to her did she come out of that restaurant? A I kept on motioning until I went across the street and then she came out when I was half way across the street.

Q How long was that? A About five seconds.

CASE #2100

16
Q did you testify at the former trial that it was two or three minutes? A I don't know what I testified to. I could not say.

Q If you testified to that was that the truth?

MR. ELLISON: Objected to as hypothetical.

THE COURT: Sustained.

Q Did you not testify at the former trial that after you beckoned to Mrs. Hunter ---

THE COURT: The jury know that every man that sees anything like that will give a different account as to the time occupied by the occurrence.

Q Well, you did not then go into the hallway, did you? A No, sir.

Q You called Mrs. Hunter and Mrs. Cameron out from the restaurant? A Yes, sir.

Q And you started to converse with them? A No, sir.

Q What did you do? A I stood at the curbing of the street, and she asked me to go and get a policeman, so I went down to the corner.

Q You were standing at the curb? A Yes, sir.

Q And then Mrs. Hunter asked you to go for a policeman?

A Yes, sir.

Q What did she know what occurred in the hallway? A I don't know; I didn't know myself.

Q She asked you at once to go for a policeman? A Yes, sir.

Q What did you tell Mrs. Hunter to cause her to ask you to go for a policeman? A What did I say to Mrs. Hunter? A Yes; you say you called her from the restaurant? A Yes, sir.

CASE #2100

Q You were standing at the curb? A Yes.

Q What did you say to her? A I told her to go in and find out what was the matter, but when she was in the vestibule, I didn't know anything.

Q What did you say to her? A I said nothing to her.

Q Why did she ask you to go for a policeman then? A Because she had gone in there in the vestibule; I don't know.

Q After you beckoned to Mrs. Hunter in the restaurant, she did not come out, did she? A No, sir, not at first.

Q Then you went across the street? A When I went across the street she came out.

Q Did you say anything to her then? A No, sir, I told her to go in and find out what was the matter.

BY THE COURT:

Q Well, that is something, isn't it? A Yes, sir.

BY MR. STIEFEL:

Q Before that time did she ask you to go for a policeman?

A No, she did not ask me before that.

Q When did she ask you to go for a policeman? A When she caught him in the vestibule.

Q Did you follow Mrs. Hunter in the vestibule? A No, sir.

Q Well, what did you go over to tell Mrs. Hunter about?

A I didn't know but what there was trouble.

Q Why didn't you go into the vestibule with her? A It was none of my business, I guess, I guess.

Q But it was your business to notify Mrs. Hunter about the

1027
CASE #2100

18
child? A I thought it was my business to notify her to that effect.

Q And you did not think it was any of your business for the purpose of protecting this child, did you? A I didn't know what occurred.

Q Did you think it was any of your business to protect this child?

MR. ELLISON: I object to it as already answered.

THE COURT: He has answered.

Q Yes or no? A No.

Q You are a married man? A Yes.

Q Did you at any time hear this child scream? A Yes.

Q When for the first time? A I could not tell you the time, but she made a low scream before I went over and called Mrs. Hunter.

Q Did you hear the child scream at the time this defendant took the child into the vestibule? A Yes, sir.

Q You didn't think it was any of your business to go over and protect the child?

MR. ELLISON: Objected to as already answered.

THE COURT: Yes, sustained.

Q Why didn't you when you heard this child scream go over there and liberate her from this defendant? A Well, I don't know.

Q You mean to tell this jury you don't know why you didn't go over and protect this child? A I didn't know what occurred.

CASE #2100

MR. ELLISON: Objected to as immaterial. Objection sustained.

Q When you heard the child cry why didn't you go over and notify her mother?

MR. ELLISON: Objected to as already answered.

THE COURT: sustained.

Exception taken.

Q Did you go after an officer? A I went to the corner.

Q Did you go? A Yes.

Q Where did you go? A I went as far as Lexington avenue, and 50th street.

Q Did you see one? A No, sir.

Q How far was the station house from 125 East 50th street?

A I could not tell you; the distance, I think it is a block and a half.

BY THE COURT:

Q It is in 51st street? A Yes, sir.

Q Between Third and Lexington avenue? A Yes, sir.

Q In the middle of the block? A Yes.

BY MR. STIEFEL:

Q You knew that at that time? A Yes, sir.

Q Why didn't you go around to the station house? A Because there were a lot of little boys running around there.

Q They were not asked? A I didn't know but what they were going around there.

Q What are your duties in the Adams Express Company?

CASE #2100

THE COURT: He is not with the Adams Express Company.

Q Or the New York Central Railroad. A My business?

BY THE COURT:

Q Yes. A Porter.

Q How much money did you get a week? A I got forty-eight a month.

Q What did you do for that? A I did porter work and running an elevator.

BY MR. STIEFEL:

Q You ran a freight elevator? A Yes, sir.

Q Were you running an elevator that afternoon? A No, sir.

Q At any time that afternoon were you running the elevator?

A Yes, sir.

Q When?

MR. ELLISON: Objected to as immaterial.

THE COURT: Sustained.

BY THE COURT:

Q You were born in the United States, were you? A Yes.

Q How old are you? A Forty-five years of age.

BY MR. STIEFEL:

Q Mr. Frank, were you asked this question in the Magistrate's court and was this your answer: "Q Was the little one following her or following the man? A The little girl was following the man." Is that right? A I could not remember.

Q If you were asked that question and you gave that answer--

THE COURT: He said he does not remember.

CASE #2100

Q Do you remember being asked this question and giving this answer to the following matter: "Q Now, there is no mistake about that? A Yes, because the little girl followed him."

A I don't remember what statement I made.

Q Do you remember whether or not this question was asked of you and you gave the following answer in the Magistrate's Court in this matter: "Q Didn't the three of them go behind the door that was closed so that they were out of your sight? A The eldest one got out of her sight, but the little one stood in front of the door."? A I don't remember.

Q There were three girls there were there not at the time you saw the defendant? A No, sir, two.

Q Two girls, - did the two girls follow into the vestibule with this defendant? A No.

Q What happened with the other girl? A The other girl came after looking for her.

Q Weren't they playing together prior to the time this defendant came there? A They were playing before he came along.

Q Weren't they together at the time the defendant was in front of the premises 125 East 50th street? A No, sir.

Q Where was the other girl? A Up in the next doorway in the stoop.

Q How soon after did she come back? A When she missed the little girl she came looking into the doorway for her.

CASE #2100

Q She went into the vestibule? A Yes, sir.

Q Were there a lot of boys in the roadway at that particular afternoon? A No, sir, no boys.

Q You did not see any boys at all? A No, sir.

Q Why are you so positive that you saw no boys that afternoon?

THE COURT: That is excluded as immaterial.

Q Did you take any particular notice or did you mark it down in any memorandum book that you saw no boys? A Yes, I always go and look out and see whether our windows are protected.

Q Is that the only answer you can make? A I was looking out of the vestibule and I seen no boys.

Q The boys are in the habit of playing ball on that street?
A They aresometimes and sometimes not.

Q Were they playing ball at this time? A No, sir.

Q You swear to that, to be as true as any testimony you gave? That is as true as any other testimony you gave?

MR. ELLISON: Objected to as immaterial.

THE COURT: Objection sustained.

Q You are very positive that you saw no ball playing, no ball being played that afternoon? A Yes, sir.

Q On 50th street? A Yes, sir.

BY THE COURT:

Q At the time you spoke about? A Yes.

BY MR. STIEFEL:

Q Before the time and after the time of this occurrence?

CASE #2100

A No, sir, none after it occurred, or before it occurred.

BY MR. ELLISON:

Q You said there were two little girls there: Now, was the other girl larger or smaller than Beatrice Hunter? A Beatrice, I believe, is the oldest.

Q Was the other one larger or smaller? A There was one little one, I don't know which ones are their names.

Q This little girl with the light hair, was she larger than the other little girl? A Smaller.

(At this point Beatrice Hunter is called into the court room.)

Q Was this the larger of the two girls (indicating Beatrice Hunter)? A Yes, sir.

Q Is that the girl that went into the hallway? A Yes, sir.

Q The other girl, you say, was smaller? A Yes.

Q She is the girl you referred to as the little girl, is that so? A Yes, sir.

MRS. EDNA HUNTER, (63 East 125th street) called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. ELLISON:

Q You are the mother of Beatrice Hunter? A Yes, sir, I am.

Q How old is Beatrice? A Six years.

Q How long have you been married, Madam? A Going on eight

CASE #2100

Q Where were you living on the 6th day of May, 1915? A 125 East 50th street.

Q What floor did you live on? A Third floor in the rear.

Q What ~~was~~ your family consist of, and how many? A Three.

Q Your husband, yourself and Beatrice? A Yes.

Q Where were you about four o'clock on the afternoon of May 6th, this year? A Down in the restaurant.

Q Restaurant located where? A At 125 East 50th street.

Q At that time where was your little girl Beatrice? A At that time in the hallway playing, on the street, right in front of the vestibule.

Q At any time while you were in that restaurant did anything attract your attention? A Yes, sir, Mr. Banks requested our attention from across the way.

Q How did he attract your attention? A By staring over at us. Then he finally motioned, he nodded his hand like that (indicating).

Q When Banks nodded to you with his hands as you showed the jury what did you do? A I got up and ran out. I thought there was something the matter and I got up and ran out.

Q Where did you go when you ran out? A Going out to the vestibule.

Q Where did you go? A Right inside the hallway.

Q Of what premises? A Of 125 East 50th street.

Q When you got into the hallway tell the jury what you saw?

A When I got into the hallway I seen Harry Newman feeling around

CASE #2100

1035

the hall. He said he lost his ball. He said he was looking for it. Then he was stooping down in front of my little daughter. And then when he jumped up, he was all exposed.

Q When you say he was exposed, tell the jury what you mean?

A The front of his pants was all open.

Q Then what happened? A Then I grabbed him and asked him what he was doing. He told me he was looking for his ball.

Q Then what did you do? A I held fast to him, and the school children were coming out, and one of the children went and got the policeman for me.

Q Was he placed under arrest? A Yes, sir, he was.

Q Were you present the next day when your little girl was examined by Dr. Gibbs? A Yes, sir, I was.

Q Where was she examined by the doctor?

THE COURT: The doctor will testify to that.

Q Had you ever known Mr. Banks, the man who beckoned to you, before that day? A No, sir, I never knew him, but I seen him working over there.

Q Had you ever spoken to him? A No, sir, I had not.

Q He was working right opposite from where you lived?

A Yes, sir.

CROSS EXAMINATION BY MR. STIEFEL:

Q Did you ever notice whether or not he saw you with your child? A Yes, sir, I suppose he had.

Q How did he know that that child which was taken in the vestibule was your child?

CASE #2100

MR. ELLISON: Objected to.

Objection sustained. Exception.

Q Did you know Mr. Banks previous to this time? A No, sir,
I didn't know him.

Q Did he know your husband? A No, sir.

BY THE COURT:

Q Didn't you say you knew him by sight? A Yes, that is
all...

Q You knew him by sight? A Yes.

BY MR. STIEFEL:

Q Did he ever speak to you? A No, sir.

Q How did he know that was your child?

MR. ELLISON: Objected to as immaterial.

THE COURT: That is excluded.

Q How did he know that was your child in the vestibule?

MR. ELLISON: Objected to.

THE COURT: Objection sustained. Exception taken.

Q How did he come to make any motions to you respecting
this child being in the vestibule of 125 East 50th street?

MR. ELLISON: Objected to, calling for conclusions.

THE COURT: Objection sustained.

Exception taken.

Q Do you know any reason assigned by Mr. Banks to notify you
while you were in that restaurant as to any happening on the
afternoon of May 6th, covering premises 125 East 50th street?

MR. ELLISON: Objected to as immaterial.

CASE #2100

THE COURT: Objection sustained.

27

Q Did you see Mr. Banks that afternoon before this alleged occurrence? A I did see him standing in the hallway.

Q Did he see you coming down with the child?

MR. ELLISON: Objected to. How can she tell?

THE COURT: Excluded.

Exception taken.

Q What time did you leave your house? A I had been down in the restaurant all afternoon.

Q What time did you leave your house? A I don't know exactly what time; it was around twelve o'clock.

Q Where was your child at that time? A Downstairs in the restaurant.

Q Did you immediately go into the restaurant? A Yes, sir.

Q You allowed the child to remain on the street from twelve o'clock until the time you saw this defendant in the vestibule?

A No, sir, not all the time.

Q When did you next see your child after you came from your house at twelve o'clock? A I was running out to her every few minutes to see whether she was there.

Q What did you go into the restaurant for? A I was helping the woman in the restaurant.

Q And you want this jury to understand that every few minutes you ran out and looked for your child? A Yes.

Q What were you helping Mrs. Cameron about? A Helping her in the restaurant, doing sewing, and things like that.

1037
CASE #2100

Q Where were you, in the back of the restaurant? A No, sir, I was sitting in the front.

Q That was immediately adjoining premises 125? A Yes, sir.

Q Did you come out of the restaurant at any time between three and four o'clock that afternoon, to look out for your child? A Yes, sir.

Q To the best of your knowledge what time? A It was a little after four o'clock.

Q A little after four o'clock you came out of that restaurant and looked for your child? A Yes, sir.

Q But there was not any time between three and four you came out to look for the child? A Yes, I was out several times before that. It was a little after four o'clock the accident occurred.

Q What time were you notified by Mr. Banks, to the best of your recollection? A About 4:10.

Q You were notified about 4:10? A Yes, sir.

Q How soon after did you come out of the restaurant? A About a quarter after four.

Q He notified you at 4:10? A Yes.

Q How many times did he nod or beckon to you before you came out of the restaurant? A Only once.

Q Did he walk across the street? A Not at that time.

Q How soon after he beckoned to you the first time did he walk across the street? A After the crowd had gathered.

Q How many minutes after Banks beckoned to you did he walk

CASE #2100

across the street; was it a matter of five minutes or a matter of ten minutes? A About five minutes afterwards.

Q About five minutes after he walked across the street, and you still remained inside of the restaurant, is that right?

A No; I was outside the restaurant when Banks came across the street, going into the hallway.

Q It was about five minutes after he came across the street, is that right? A Yes, sir.

Q What did Banks say to you when you seen him across the street? A I was not speaking to him.

Q Did he speak with you? A No.

Q You came outside and immediately went into the hallway?
A Yes.

Q What did you see? A I seen my daughter in one quarter of the hall, in the vestibule, and Harry Newman in front of her in a crouching position.

MR. STIEFEL: I ask your Honor at this stage to give me an opportunity to have her demonstrate the position before the jury.

BY THE COURT:

Q What do you mean by in front of?

MR. STIEFEL: I want this to be shown to the jury in which position at that time this defendant was respecting this child. Let it be shown to the jury.

BY THE COURT:

Q Show the jury the way this defendant was standing over

CASE #2100

your child, taking Mr. Ellison. Madam, just stand in the same way you say he was standing, using Mr. Ellison? A He was stooping down like this in front of my daughter (indicating by stooping forward).

MR. STIEFEL: I ask at this stage that I be allowed to have this presented before the jury by the person who saw the defendant in the position, and as to the child's position.

THE COURT: The witness did describe it.

BY MR. STIEFEL:

Q Will you use Mr. Ellison and show to the jury which way he was stooping down in front of your daughter?

THE COURT: That is excluded. The witness has already done so.

MR. STIEFEL: Exception.

Q In what position was your daughter in at the time? A Standing up with her back against the door. Her clothes were up and her drawers were unbuttoned.

Q When you say unbuttoned, describe to the jury what you mean? A The two side buttons buttoned.

Q The sides buttoned or unbuttoned? A Were buttoned, and the front button was unbuttoned.

Q Her drawers up? A Yes, sir.

Q What did you see this defendant do after noticing the condition of your child's apparel? A He kind of moved around a

CASE #2100

31
little bit and then when he stood up he was all exposed, his pants open.

BY THE COURT:

Q What do you mean by saying he was exposed; did you see his private parts? A Yes, sir, I did.

BY MR. STIEFFEL:

Q Was his head on the child's chest in the position you found him? A His head was not on her chest.

Q Was his chest on her head? You say he was in a crouching position. Where was his chest with reference to the girl's head? A His chest was not on her head.

Q If he was in a crouching position where was his chest, on any portion of the child's body? A That distance from her, he was about (indicating about ten inches) when I came in the hall.

Q Distant from where? A From my daughter.

Q Then you didn't see anything done by this defendant to your daughter? A I didn't see it done, but I seen him all exposed.

Q If you testified you saw this defendant do anything to your daughter, you were in error?

MR. ELLISON: Objected to as hypothetical. She never said so.

THE COURT: That is excluded.

Q Did you so testify to that? A No.

Q Did you ever see this defendant touch the person of your child? A No.

Q All you saw that he was there when you came into the vesti-

1041
CASE #2100

bule there? A Yes, sir.

Q And you saw your child's dress up? A Yes, sir.

Q And the center button of her drawers unbuttoned? A Yes, sir.

Q Then you had a conversation with this defendant? A All I asked him, what he was looking for.

Q What did he say? A He answered me he was looking for a ball..

Q Did you see the ball? A No, sir, I did not.

Q And then after he said he was looking for the ball, you did not see what happened next with the defendant? A I held him until one of the school children got a policeman, who arrested him.

Q Did you ask Banks to go for an officer? A No, sir.

Q Did you have any conversation with Banks about going for an officer to have this defendant arrested? A No, sir.

Q And if Banks testified to that he testified to an error?

MR. ELLISON: Objected to.

THE COURT: Sustained.

Exception taken.

BY MR. ELLISON:

Q Were you very calm and quiet and pleased with what you saw in the vestibule? A Yes, sir, I was.

Q You were pleased? A No, sir, I was not.

Q You were excited, were you? A Yes, sir, I was at the time.

CASE #2100

Q You don't remember everything you said and did, then, do you? A I don't just exactly remember everything.

BY MR. STIEFEL:

Q You recollect everything that occurred as far as this defendant and your child were concerned in the vestibule of these premises No. 125? A Yes, sir.

Q You knew Mrs. Cameron was in back of you? A Yes.

Q You knew that Mr. Banks was the one that first spoke to you about your child being in the vestibule? A Yes, sir.

THE COURT: The witness answered that.

Q Did you ever see this man before that day? A No, sir.

Q Never had anything to do with him? A No, sir. I never had any conversation with Mr. Banks.

Q After the defendant told you that he was looking for the ball, you asked somebody to go for an officer, is that right?

A Yes, sir.

Q Who was the somebody?

THE COURT: That is excluded as already answered.

Q Did you say anything to Mrs. Cameron? A No, sir, I did not.

BY THE COURT:

Q Did you dress your child before she went out that day?

A yes, sir.

Q You do not keep a nurse, do you? A No.

Q You are a poor woman? A yes.

Q You have to look after your child yourself? A Yes.

CASE #2100

Q Did you dress her or not? A Yes, sir, I did.

Q Did you open her drawers when you put her out on the street to play? A No, sir.

Q They were properly fastened? A Yes, sir, they were.

Q Have you got those drawers? A Yes, sir, I have got them right here, just the same way they were when they were taken off of her.

BY MR. STIEFEL:

Q Did you have those drawers at the last trial?

THE COURT: That is excluded.

Exception taken.

Q Did you give the district attorney those drawers at the former trial?

MR. EILISON: Objected to as immaterial.

THE COURT: Excluded.

Exception taken.

Q Did you have possession of those drawers on the 7th day of May, 1915? A Yes, sir.

Q Were they asked for at any time?

THE COURT: That is excluded as immaterial.

Exception taken.

Q Were they produced in the Magistrate's Court?

THE COURT: That is excluded as immaterial.

Exception taken.

THE COURT: You may show if she was ever asked for them and did not produce them; I will allow that.

CASE #2100

Q Did the district Attorney ask you for those drawers?

A No, sir.

Q Did you tell him you had them? A I told him this morning.

Q I mean on the first trial? A No, sir.

Q Were the drawers torn? A No, sir.

Q After you got hold of the defendant what did you see regarding the defendant's person? A I see his private parts all exposed.

Q Did you say anything in the presence of the defendant in the station house, to the lieutenant at the desk about that; what complaint did you make in the station house when this defendant was around?

MR. ELLISON: Objected to as immaterial.

Objection sustained.

THE COURT: You may show that at any place she made statements which differed from the statements made here today, so that the jury may determine what weight they will give to it.

BY THE COURT:

Q You are no lawyer? A No.

Q You have not studied the Penal Law, have you? A No.

Q You did not know what crime this was, if any crime? A No, sir.

BY MR. STIEFEL:

Q Did you hear your daughter crying at any time between a quarter to four and ten minutes after four on the 6th of May?

CASE #2100

A Just as I was going out into the hallway.

Q Did you? A Yes, sir.

Q When? A Just as I was going out into the hallway, into the vestibule I heard her cry "Mamma".

Q That was about ten minutes after four? A After four.

Q Will you describe to the jury how these vestibule doors are arranged in the premises 125? A There is the first vestibule, and then there is a door heading in the back of the vestibule going upstairs.

Q One is open and the other is shut? A One side of the door is open and the other side shut.

Q What is the difference between the space of the door that is open to the one that is closed? A About a yard and a half I should think.

BY THE COURT:

Q There is a street door? A Yes.

Q That was closed or open? A Half was closed and the other half open.

Q This door is divided into two doors? A Yes.

Q Half the street door was closed and half closed?

A Yes, sir.

Q Then you step from the street door into the vestibule?

A Yes.

Q Then there is another door leading from that vestibule leading into the innerhallway? A Yes.

Q Was that open or closed? A That door was closed.

CASE #2100

Q So whatever you told us, these actions are alleged to have taken place in the vestibule? A Yes.

Q Not in the inner hall, at all? A No, sir, in the vestibule.

BY MR. STIEFFEL:

Q How far is that door from the street or the vestibule door?

THE COURT: That is too vague, which door, the inner door or outer?

Q The door leading into the entrance of premises 125 East 50th street. I am talking about the door, the first door, the entrance door of premises 125? A About seven feet, I should think.

Q Were there a considerable lot of people walking on that street that afternoon? A No, sir, there were not.

Q Did you notice how many people were walking on the street between a quarter to four and ten minutes after four? A No, sir.

Q Did you take any particular notice? A No, sir.

Q You were not looking outside in the street at all? A No, sir.

Q So you don't know whether or not ten or twelve people may have passed between a quarter to four and ten after four of that afternoon? A No, sir.

Q That front vestibule door is always open, isn't it?

A Yes, sir.

Q It was open at the time you went into the premises where you could see this defendant? A Yes, sir.

CASE #2100

Q It was daylight? A Yes, sir.

Q Was there any child there at the time when you came out of the front of the premises 125? A A Only the little girl my daughter was playing with.

Q She was the only one that was there? A That is all was out there playing, yes, sir.

Q How soon after that did the crowd collect? A Well, about five minutes.

Q How did the crowd come together, if there was nobody, but this little girl on the street?

MR. ELLISON: Objected to as calling for a conclusion.

THE COURT: Sustained.

Q Where did the people come from?

MR. ELLISON: Objected to as immaterial.

THE COURT: Objection sustained.

Exception taken.

Q Did you see any people coming, walking on that street while you were outside the restaurant, about ten minutes after four?

BY THE COURT:

Q Before you saw this man with your daughter, did you see any people on the street? A No, sir.

Q And after the arrest did you see any people on the street? A After the arrest there were a few people on the street.

BY MR. STIEFEL:

Q A lot of school boys? A School children were coming out.

CASE #2100

yes.

Q Did you see any school children in the roadway before you came out of the restaurant? A No, sir.

Q You testified, didn't you; you stated before, you were not looking outside of the restaurant?

MR. ELLISON: Objected to as argumentative.

THE COURT: Sustained.

Q Were you looking on the street from the restaurant at the time?

MR. ELLISON: Objected to as already gone over.

THE COURT: Sustained.

Q How far were you in the restaurant from the street between a quarter to four and ten after four on the day of May 6th, 1915?

A I was seated right at the first table.

Q And your back was towards the door? A No, sir, I was sitting sideways, the side of my face was towards the door.

Q You were facing the street sideways? A Yes.

Q You could see all the people could you not? A No, I could not see them all.

Q Do you know any boy that you asked to go for an officer?

THE COURT: That is excluded as immaterial.

Exception taken.

Q Were the defendant's head and shoulders bent over the child while she was in the vestibule? A They were bent in front of her.

Q The head and shoulders were bent in front of the child?

CASE #2100

A Yes.

Q Show the jury the position he was in?

MR. ELLISON: Objected to. We have been over that.

That is repetition.

THE COURT: Excluded.

Exception taken.

THE COURT: She has illustrated to the jury in your sight and in their sight.

Q Did you notice in the position that the child was standing whether or not the privates of this defendant entered the privates of your child?

MR. ELLISON: That is objected to.

Q Well, you did not see his privates in the privates of your daughter, did you? A No, sir.

THE COURT: She has not said she did.

Q You did not see the child's drawers torn at all? A No, sir.

BY THE COURT:

Q They were not torn you say? A No, sir, they were not torn.

J O H N M c G U R R, an officer of the 29th Precinct, called on behalf of the People, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ELLISON:

Q Are you a member of the police force of the City of New York?

CASE #2100

A Yes, sir.

Q What precinct were you attached to on May 6th, 1915?

A 29th Precinct.

Q Were you on post at about four o'clock in the afternoon?

A On that day I was being house duty.

Q Did any one come to the station house, and make a complaint, yes or no? A Yes.

Q As a result of that, where did you go? A 50th street and Lexington avenue.

Q When you got up there did you see this defendant, Harry Newman? A Yes.

Q Did you place him under arrest? A Yes.

Q Did you see the mother there, Mrs. Hunter? A Yes.

Q Did you see the little girl, Beatrice Hunter? A Yes.

Q Did you have a talk with this defendant, yes or no, or did he have anything to say to you? A Yes.

Q What did he say to you? A I asked him what he was doing in the hallway there. He told me he was playing ball; that his ball went into the hall there.

Q Anything else said? A That is all.

Q Did you then take him over to the station house? A Yes.

Q Did the little girl go there and the mother? A They all went there to the station house.

Q Do you know whether an ambulance call was sent out? A Yes.

Q Did the doctor come on the ambulance? A Yes, sir.

CASE #2100

CROSS EXAMINATION BY MR. STIEFEL:

Q Officer, you say that the defendant stated in the presence of Mrs. Hunter that he was playing ball, to you? A Yes, sir, he did.

Q Did you see any ball there? A No, I did not see any ball there.

Q Did you patrol prior to May 6th, 1915, this block 50th street between Lexington and Park avenue? A No, sir.

Q You don't know of your own knowledge whether the school boys played ball in the roadway of that street?

MR. ELLISON: objected to as immaterial.

THE COURT: sustained.

WILLIAM TRAVERS GIBBS (42 West 75th street)
a witness called on behalf of the People, being first duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. ELLISON:

Q Doctor, you are a physician, duly licensed to practice in the County of New York? A yes, sir.

Q And have been for how many years? A Since eight years.

Q You are the physician for the Society for the Prevention of Cruelty to Children? A Yes, sir.

Q As such physician how many children have you examined the private parts of? A I have examined for the purpose of ascertaining whether any injury had been done, - is that what you mean?

1052

CASE #2100

Q Yes. A Considerably over two thousand.

Q Did you examine the complaining witness in this case, Beatrice Hunter? A Yes, sir.

Q On what day and where? A I will have to consult the records made at the time.

Q You may do that and refresh your recollection? A I examined Beztrice Hunter, age six years on the 7th of May, at my office, 42 West 75th, at twelve o'clock in the morning.

BY THE COURT:

Q You mean noon? A Yes, sir.

Q Did you examine her private parts? A Yes, sir.

Q State what your examination disclosed? A I examined her private parts and found her hymen had been recently ruptured, indicating complete and recent penetration of her genital organs by some blunt body.

Q Explain that, the hymen? A The hymen is a membrane, partially covering the opening of the vagina, the opening to the internal private parts. It is very much like the membrane in your thumb, and it is thin, and the penetration of any blunt body large enough to stretch or tear that membrane, causes complete rupture.

Q Would the entrance of a man's private parts produce the condition you found in that child? A Yes, sir.

MR. ELLISON: That is all.

CROSS EXAMINATION BY MR. STIEFEL:

Q Could the entrance of any blunt instrument or any other

CASE #2100

blunt object produce the same result? A Any blunt object large enough to produce a tear.

Q You are not in position to swear that the privates of this defendant penetrated that of the child in question? A No, sir.

BY THE COURT:

Q You said recent; can you express any opinion as to the length of time that had elapsed between your examination and the rupture you speak of? A The parts had not healed, and that healing takes place at from three to ten days.

Q So that it was at least within three days? A Yes.

Q It was very recent? A Oh, yes, recent; a recent tear.

Q Were there any abrasions on the child's body? A Only on the edge of the hymen.

Q And there was an abrasion on the edge of the hymen? A Yes a raw surface.

Q Where some blunt instrument or foreign substance had torn the hymen? A Yes, sir.

MR. ELLISON: I rest, with the exception of calling the other physician. He will be here at 2 o'clock.

JUROR NO. 2: Your Honor, Dr. Gibbs, is my private physician. I don't know whether that makes any difference.

THE COURT: That does not make any difference, but you will not be influenced in your decision of this case one way or the other?

JUROR NO. 2: No.

THE COURT: What light that throws on the case you

1054

CASE #2100

may determine independently of any other consideration?

MR. STIEFEL: I move to dismiss the indictment upon the ground the people have failed to prove a case against this defendant.

THE COURT: Motion denied.

MR. STIEFEL: Exception.

MR. STIEFEL: Further upon the ground that under the statute it is necessary that corroborative testimony be given of a crime of this character. There is no evidence adduced on the part of the prosecution that there was any rape committed on the person of this child, nor is there any corroborative proof which is absolutely essential under the statute before the defendant is called upon to prove his innocence.

THE COURT: I will submit that matter to the jury as to what they think happened in the hall from the stories told to them. They must determine how much weight they will give the testimony. So far as the law is concerned all the requirements of the law have been met with. It is for the jury to determine what weight if any they will give this testimony.

MR. STIEFEL: Exception.

THE COURT: It is for them to decide what took place in the hallway, if anything took place.

MR. STIEFEL: Exception.

1055

CASE #2100

DEFENDANT'S CASE.

46

Mr. Stiefel opens to the jury.

HARRY NEWMAN, the defendant, (419 East 56th street) called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STIEFEL:

Q How old are you? A Sixteen.

Q Were you born in this city? A Yes, sir.

Q Did you attend the public schools? A Yes, sir.

Q What do you do for a livelihood? A I am a boss of my own, in the line of fruit and vegetables.

BY THE COURT:

Q You are in the vegetable business? A Yes.

Q Peddler? A Yes, sir.

BY MR. STIEFEL:

Q How long have you been in that line of business? A Two years.

Q How many customers do you serve? A Between seventy to eighty customers each day to serve.

Q Amongst the customers are storekeepers and boarding house keepers, and that? A All big boarding house hotel and restaurant trade.

Q And up to the time of your arrest on the 6th of May did you have a business bank account in your name? A Yes, sir.

Q Where? A In the Security Bank, 57th street and Third avenue.

1056

CASE #2100

Q Do you recall the afternoon of the 6th of May? A Yes, sir.

Q Where were you between half past three and four o'clock, on that afternoon? A I just had been coming from my house. I went to look, I had my workmen out with the pushcart, and a lot of stuff, and I thought I could find them between that neighborhood. I walked from my house in 56th street, 419.

BY THE COURT:

Q That is over by the river? A Yes. I walked straight over to Third avenue down to 53rd street, I turned through 53rd looking for him till I went to 50th street, so I turned in the block there, and there was two boys playing ball which I happened to notice and I stood there a while. These boys were playing handball. They happened to miss the ball, and I ran after it and caught it and gave it to them. They said, "Do you want to have a game?" I said, "Yes, I will pass my time away." Maybe my workman would come through the street with the push cart and I could see him.

Q What time about did you start to play ball with these boys? A I started playing ball about a quarter to four.

Q Did you take any particular notice to a witness by the name of Mr. Banks in the street that afternoon? A No, sir.

Q Now, how long did you play with the boys' ball? A I played with the boys about twenty or twenty-five minutes.

Q During the time that you played ball with them what happened with the ball? A We were playing ball; I was in the back

CASE #2100

48
there and I happened to miss the ball, and the ball flew into the hallway there.

Q Hallway where? A 125 past 50th.

Q Is this the hallway that was testified about by the witnesses a few minutes ago? A Yes, sir. I happened to run in after the ball. There was some girl standing there, and I picked up the ball, and this woman came out and she grabbed hold of me. She said I tried to touch her daughter. I did not know what the woman grabbed me for. She said "You tried to touch my daughter". I said, "There is the ball". I was so frightened when the woman grabbed me I dropped the ball out of my hand.

Q At the time the woman grabbed you and the ball dropped out of your hand, will you tell the jury how you were attired? A What?
BY THE COURT:

Q Were your trousers open? A No, sir.

BY MR. STIEFEL:

Q Were your privates ever exposed in the presence of Mrs. Hunter? A No, sir.

Q Did you have a child in the corner there, and were you in a crouching position at the time Mrs. Hunter entered the vestibule of premises 125 East 50th street? A No, sir.

Q Did you see the child's dress turned up and did you see the drawers in the front unloosened? A No, sir.

Q Did you have anything to do regarding the person of this child? A No, sir.

CASE #2100

Q Your privates were never put in by you into the privates of this child? A No, sir.

Q Were you in a crouching position as was testified to by Mrs. Hunter when she came in? A No, sir.

Q Where were you at the time she came in and what position were you in?

THE COURT: He said he was picking up the ball; that he did not touch the girl.

Q How far away were you from the child when you were picking up the ball? A I was just to walk out of the hallway with the ball when this woman entered.

Q You were just about to go out of the vestibule hall?

A Yes, sir.

Q When Mrs. Hunter took hold of you? A Yes.

Q Who else was there? A Some other woman with her.

Q Do you know her name? A No, sir.

Q It was testified to that you took hold of this child's arm, and took her from the street into the vestibule there, is that right? A No, sir.

Q Did you at any time touch this child the afternoon of May 6th, 1915, or any time prior to that? A No, sir.

Q Is that the first time you ever saw the child in question?

A Yes, sir.

Q Do you know what the child was doing at the time you went into the vestibule before looking for the ball? A No, sir.

Q The child's dress was intact, it was down the same way

1059

CASE #2100

as any child's that plays on the street? A I did not notice the dress at all because I just ran in after the ball. I didn't notice the child.

Q How long were you in the vestibule? A I don't believe any longer than twenty-five or thirty seconds.

Q It was testified to that you were in there between two and five minutes, is that right? A No, sir.

Q Will you state the conversation that happened in the station house between Mrs. Hunter and yourself. to the Lieutenant?

THE COURT: How is that material?

MR. STIEFEL: I want to contradict Mrs. Hunter.

Q Did Mrs. Hunter state anything to the Lieutenant about you playing ball? A Yes, sir.

Q What was it? A She said to the lieutenant, she saw the ball drop out of my hands, and she claimed the drawers of the child were not open.

Q What did Mrs. Hunter say to you when she saw you in the vestibule? A She said I tried to touch her daughter. I looked at the woman. I did not know what happened.

BY THE COURT:

Q She charged you then with assaulting her daughter, didn't she? A Yes.

BY MR. STIEFEL:

Q Do you know the words she used to you?

(No answer.)

CASE #2100

BY THE COURT:

Q She said something to you there? A Yes.

Q Do you remember what she said in the hallway? A As soon as she came in.

Q You were there, weren't you? A Yes.

Q The girl was there? A Yes, sir.

Q The mother was ther ? A Yes.

Q And there was another woman coming right after the mother?

A This woman was with the mother.

Q What did the mother say to you right then and there?

A She grabbed hold of me and she said, "I am going to send after a policeman." I said, "You can do so. You need not hold me. I will not run away."

BY MR. STIEFEL:

Q What did she say? A She said to me, "I am going to send after a policeman."

Q What did you say? A I told her, "I didn't do nothing, you needed send after a policeman." I said, "You need not hold me." She said, "You will run away." I said, "I did not do anything, I will not run away." Then she left go of me and stood in front of me.

Q How long did you remain there until the officer came?

A About two or three minutes.

Q What did Mrs. Hunter say to the officer?

BY THE COURT:

Q Did she say anything else to the officer? A No. She told

CASE #2100

the officer to arrest me.

Q For what? A That I don't know.

Q Did you hear what she said to the officer? A No, sir.

Q She did not charge you with playing ball, did she? A She said I tried to touch her daughter.

Q She told the officer you tried to touch her daughter?

A Yes, sir.

BY MR. STIEFEL:

Q What time did this happen? A I could not exactly say the time.

BY THE COURT:

Q Was it the morning, noon or night? A Towards evening.

Q About what time towards evening? A About four o'clock.

BY MR. STIEFEL:

Q How did you come to get over to that section of the city?

A I had my man out with a push cart and a lot of stuff, and I thought I would go after him and see if he sold it.

Q Were you in the habit of doing that prior to the 6th of May? A Yes, sir.

Q Did the man have any particular locality in which to sell the wares that you gave to him? A No, sir, through that neighborhood, he always worked through that neighborhood.

Q From what street to what street? A From 48th to about 59th street and 60th street.

Q And from what avenue to what avenue? A First to Sixth avenue.

CASE #2100

Q You were in the habit prior to the 6th of May to look after him, after you got through disposing of your wares? A yes, sir.

Q And you are very certain regarding the time, that you did not remain in the vestibule in premises 125 East 50th street, more than from five to ten seconds? A Yes, sir.

MR. STIEFEL: That is all.

THE COURT: Gentlemen of the Jury, be very careful not to discuss this case among yourselves, or with any one else. You must not come to a conclusion as to the guilt or the innocence of the defendant until you have heard all the evidence on both sides. You must keep your minds open until the case is submitted to you by the Court for your decision. That is the time to make up your mind and not before that. We will take a recess until 2 o'clock.

(The Court takes a recess until 2 p. m.)

TRIAL CONTINUED, 2 p. m.

MR. ELLISON: If there is no objection I will put on the other doctor now, before I cross examine this defendant.

MR. STIEFEL: No objection to that.

D R. B E N A. S A L Z B E R G, (Interne at Flower Hospital) called as a witness on behalf of the People, being first duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. ELLISON:

Q You are a physician duly licensed to practice in this

CASE #2100

County? A According to the law. I am not registered in the State but there is a law whereby internes may practice without a license in a hospital.

Q You are an interne? A Yes.

BY THE COURT:

Q How long have you been studying medicine? A Four years. I am a graduate of medicine and finishing up a hospital training.

Q How long had you been interne in May? A In May I had been an interne about ten or eleven months, at the Child's Hospital, New York City, and at another hospital in Chicago.

Q What Hospital were you connected with in May? A Flower Hospital.

Q This city? A Yes.

Q In the month of May, and if you remember more definitely, on the 6th of May, 1915, did you respond to an ambulance call to a police station at 51st street? A I did, I remember the incident.

Q When you got there did you see Beatrice Hunter? A I saw a little girl. They said her name was Beatrice Hunter.

Q Did you make any examination of her? A I did.

Q Did you examine her private parts? A I did.

Q What did you find? A I found that there had been an irritation of the geniteria. I had an examination made for blood, and I found no signs of blood. I found no penetration, as far as I could see. I tried to gain an entrance with my little finger,

CASE #2100

and could not gain an entrance. There were some spots on the clothing of this little girl, and I took part of that to the hospital to have it examined, and the report came back that there was nothing to be found there; that is no spermatazoa.

Q Where was the irritation you speak of? A Just internally, to what we call the labia minora.

Q What part of the private parts was that? A Just before you get to the hymen.

BY THE COURT:

Q Just inside the private parts? A Yes..

CROSS EXAMINATION BY MR. STIEFEL:

Q You don't know what caused that, do you, Doctor? A Well, any irritation, rubbing there, would cause that.

That is, any rubbing enough to cause irritation .

Q You did not find any semen? A We examined the clothing for semen and could find none.

BY MR. ELLISON:

Q About what time of the day was this? About four o'clock?

A I could not tell you the exact time.

BY THE COURT:

Q How many children have you examined? How many cases of that kind have you had? A I have had no rape cases, but at the Child's Hospital, at Randall's Island I had a number of cases of gonorrhea, and so forth.

Q Any children of this kind? A Children from two years on

CASE #2100

about twelve.

H A R R Y N E W M A N, recalled for cross examination, testified as follows:

CROSS EXAMINATION BY MR. ELLISON:

Q You said you were in the vegetable business, is that so?

A Yes, sir.

Q Did you have the use of a horse and wagon in the conduct of that business? A Yes, sir.

Q And on the 6th day of May, the day you were arrested, was your horse and wagon out? A Yes, sir.

Q Was the man who was working for you driving it on that day? A No, sir.

Q Was somebody who was employed by you driving it on that day? A I was driving the wagon myself, but I got through at three o'clock. I was done about half past two or three o'clock.

Q Do you mean to say that on that day you did not have a man out with the wagon? A I had a man out with the pushcart.

Q What was his district to sell vegetables in on that day?

A Between 48th to 60th street, or 69th street, as far as that.

Q From 48th to 59th street, is that right? A Yes, sir.

Q On what avenues? A Between First and Sixth avenues.

Q You say you went out looking for him? A Yes, sir.

Q What were you going out to look for him for? A Because if he had anything there left I thought I would give him a hand to sell it, because if I keep it until next day it decays and I lose money.

CASE #2100

Q If he was going all the way from 48th to 59th street and First and Sixth avenues, where were you to find him? A Between that distance.

Q What streets were you to go to find him in? A I was going down to find him.

Q How did you know but what when you were on first avenue, he would be on Sixth avenue, and when you were on 48th street he might be in 59th street? A That is why I walked through the block to look for him.

Q Do you mean to tell the jury that you were going to want to go over all that territory to try to find him without knowing where he was, is that what you want them, as business men to believe? A I was looked for him through that neighborhood.

Q 48th to 59th street, that is eleven blocks? A Yes.

Q And from First to Sixth avenue, that is five of those blocks? A Yes.

Q Well, were you going on a wild goose chase through that territory to look for him?

MR. STIEFEL: Objected to as to the form of the question.

THE COURT: Sustained.

Q Were you going to just wander through that district looking for him? A No, I was going through the streets to look for him.

Q Where was he when you were in 50th street? A That is what I was trying to find out, where he was.

CASE #2100

Q You had no idea where he was? A I knew he was between that section. That is why I went through those streets.

Q Then you, who was a business man, who was looking for your man, started to play ball, is that right? A I started to play ball, I thought he might be coming through the street there any minute.

Q Well, why should he come through 50th street? Could he not come through any one of the other streets?

MR. STIEFEL: Objected to as to the form of the question.

MR. STIEFEL: Exception.

A He could come through any streets, but at that time he was working down; that is why I thought he might come through 50th.

Q Well, why could he not come through 49th or 51st street of 52nd street?

MR. STIEFEL: Objected to as speculative.

THE COURT: Allowed.

Exception taken.

A I thought he was coming out through 50th street.

Q On what did you base that thought that he would come through 50th street and not through 51st or 52nd street? A Because I went through those streets before, and I could not see him.

Q So you said, not coming through the other streets, he would come through 50th street? A I thought so.

Q He might have come through 51st? A I was just after going

CASE #2100

through 51st.

Q Couldn't he come through 49th? A I didn't go down that way.

Q Or down Lexington avenue or Fourth avenue or Sixth avenue or Second avenue? A He was working on the west side at that time.

Q You never had any trouble with Mrs. Hunter in your life?

A No, sir.

Q Have you ever had any trouble with Mr. Banks in your life?

A No, sir.

Q Did you ever know either one of them before that day? A No, sir.

Q Now, did I understand you to say this morning to the jury that when Mrs. Hunter got over to the Precinct where the lieutenant was she said that the pants of the child were not down, is that right? A Yes, sir.

Q Do you remember at the last trial being asked this question, by your own lawyer, and you giving this answer at page 76 of the testimony? "State to the jury the condition of your apparel? A When I went into the hallway there was everything buttoned, and this woman said my pants were open, in the prison." Is that right or wrong? A No, sir, I didn't hear her say that.

Q Do you remember that question at the last trial, and giving that answer? A No, sir.

Q Do you deny that you were asked that question and gave

CASE #2100

1070

that answer? A I did not hear that question the last time.

60

Q What do you mean, you did not hear it at the last trial? Do you mean to say that you don't remember that question being asked you and you didn't give that answer to your own lawyer?

A No, sir, I don't remember.

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

Q You don't deny it, do you? A I don't remember it.

Q Well, did she say in the prison your pants were open, did she say that or not? A No, she did not.

BY THE COURT:

Q Well, where did she say it? A I did not hear the woman say it at all.

Q What did she say to you in the hallway? A She just grabbed hold of me and she said, "You tried to touch my daughter. " That is all she said to me.

BY MR. ELLISON:

Q When she came into the hallway and said to you, "Are you trying to touch my daughter", you were entirely innocent weren't you? A Yes.

Q What did you think she meant when she said "Did you touch my daughter?" A I don't know what she meant.

Q Haven't you any idea what she meant? A No, sir.

Q Well, now do you remember the last trial being asked this question, and you giving this answer: "Q Did you understand what she meant by touching her child? A I thought maybe she meant I tried to kidnap her child." Did you say that the

CASE #2100

last time? A No, sir, I did not.

Q Newman, do you say you did not swear to that under oath, or don't you remember it? A I don't remember.

Q Did you say at the last trial you thought she meant you were trying to kidnap her child? A I don't remember it.

Q Did you say it or didn't you? A I don't remember it.

Q Don't you remember this question being put to you right after, "You told the jury you understood this woman to mean by that that you were trying to kidnap her child? A Yes. Q Is that right? A Yes." does that refresh your recollection as to whether or not you stated under oath that she thought you were trying to kidnap her child? A I don't remember.

Q Well, what did you say when you were asked at the last trial?

MR. STIEFEL: I object to the form as too general.

Question withdrawn.

Q What did you understand by this woman accusing you of touching her child? What did you say in answer to that? A I don't remember.

Q Was your memory at the last trial better as to what occurred on that day than it is today? A No, sir.

Q Did you find the ball in the hallway? A Yes, sir.

Q What did you do with it? A I had it in my hand and when this woman grabbed hold of me I dropped it.

Q What became of the ball, if you know? A It was in the hallway, it laid there.

CASE #2100

Q Did you pick the ball up? A No, sir, I didn't pick it up, because the policeman had hold of me. I could not pick it up. I showed the woman that there was a ball in the hallway.

Q Where was the little girl when you got into the hallway?

A She was standing towards the wall.

Q Where, what wall? A Towards the side of the wall.

Q Was one of the doors leading from the vestibule to the street closed? A Yes, sir.

Q Was it dark in there? A No, sir.

Q Did you hear the little girl scream at any time? A No, sir.

Q Did she say anything at all? A No, sir.

Q Who was the boy you were playing ball with? A I don't know the boy because I never was around that neighborhood often. I just happened to come through that street, and the ball just happened to roll past, and I grabbed hold of it and threw it to them, and he asked me would I have a game, and I said I would stay there, maybe the man would come through with a push cart. That is why I played the game. I never saw the boy before.

BY MR. STIEFEL:

Q How many times prior to May 16th did you look for a man whom you gave your wares to to vend from a push cart? A Almost every day.

Q Were you in the habit of leaving your house and then looking for them? A Yes, sir.

1072

CASE #2100

Q Where do you live? A 419 East 56th street.

Q Between what avenues is that? A Between First and avenue A.

Q Which way did you walk in this particular day from your house to look for this man whom you had in your employ? A I walked from my house straight from 56th street to Third avenue, and I went down Third avenue till I came to 53rd street, and I looked around there and I could not see him, and I walked to 53rd street to Lexington avenue, down Lexington avenue through 50th street, and I came to look up the block, and I walked through. I thought he may be in that street. These boys were playing ball, and the ball rolled over to me and I threw it to them. They said, "Do you want to have a game?" I said, "I will pass the time away until I see this man." He might be coming through any minute.

Q Now, the entrance of the door to the house, is that even with the sidewalk? A Which door do you mean?

Q The vestibule door of 125? A No, sir.

Q Was it level with the sidewalk, or above the sidewalk, or raised? A There is only one step there.

Q After you were admitted to bail did you go to 50th street for the purpose of trying to find out who these boys were you were playing ball with? A Yes, sir.

Q Did you succeed in finding them? A No, sir.

Q Now, the little girl testified (I forgot to ask you this on your direct examination) the little girl testified that you said to her, "I will make you laugh". Did you ever say anything to

CASE #2100

this little girl? A No, sir, I did not.

Q Did you ever say anything to the girl on the 6th of May?

A No, sir.

Q Were the little child's drawers down in the vestibule, when you came in there? A I didn't notice.

Q You don't know whether they were or not? A No, sir, I didn't notice the child at all, only when I noticed the ball, when I picked the ball up.

Q Did you notice the condition of her drawers at any time on the 6th of May? A No, sir.

DAVID BALSAM, (322 East 56th street) a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STIEFEL:

Q How old are you? A Nineteen.

Q Born in this city? A No, sir.

Q Do you go to Public School here in this city? A Yes, sir.

Q Up to what class? A 7-B.

Q Are you working? A No, sir, not now.

Q Were you working? A Yes, sir.

Q Where? A Riker-Hegeman's drug store.

Q How long were you there? A A year and three months.

Q Do you know the afternoon of May 6th, 1915? A I do.

Q Where were you between the hours of half past three and a quarter after four? A At 50th street and Lexington avenue.

Q What were you doing there? A I was waiting for a friend.

CASE #2100

of mine.

Q Up to that time did you know this defendant intimately?

A No, sir.

Q While you were waiting at the corner of 50th street and Lexington avenue, did you happen to see this defendant on 50th street? A Yes, sir, I did.

Q What did you see him doing? A Playing ball.

Q Do you know with whom? A Two little kids.

Q How long did you see this defendant play ball? A Five or ten minutes.

Q Did you see anything happen to this defendant five or ten minutes after that? A I noticed the ball fell in the vestibule of 125.

Q What else did you see? A I seen the ball fall in the vestibule of 125, and a friend of mine by the name of Lang happened to come along that time, and I walked with him up Lexington avenue.

Q You did not see anything else? A No, sir.

Q Did you see this defendant go after the ball in the vestibule? A No, sir.

Q Then after you went with this friend up to Lexington avenue, did you return back to 50th street? A No, sir, I did not.

Q Did you notice any children in front of premises 125 East 50th street, while you were standing on the corner of Lexington avenue and 50th? A I did not.

1075

CASE #2100

Q How did you come to acquaint the defendant with the fact that you were standing on that corner? A I seen him pass occasionally for about five months with a peddling wagon. I seen him passing occasionally for about five months with a peddling wagon. I seen him passing with a peddling wagon. I never talked to him, though.

Q How did you come to tell him you were standing on the corner? A On May 22nd between eleven and twelve o'clock on Friday morning I happened to see him. I read a piece in the paper, in the world about him, and I asked him if that was him. He said yes.

Q Did you notice on the opposite side of the street a man by the name of Banks? A No, sir.

Q Did you see any children playing ball in the roadway besides this defendant? A Yes, sir.

Q Were there many people passing up and down on 50th street while you were standing on the corner? A No, sir.

Q Did you see anybody at all on that street outside of these boys that were playing ball? A A few ladies passed.

Q And you are positive that you did not see Mr. Banks? A No, sir.

CROSS EXAMINATION BY MR. ELLISON:

Q Were you working on May 6th? A No, sir, I was not working.

Q You live in the same block with this defendant, don't you?

A Yes.

CASE #2100

Q You say you had an appointment to meet a friend of yours at 50th street and Lexington avenue? A Yes.

Q What is his name? A Lang.

Q What is his first name? A I don't know his first name.

Q Where does Lang live, in the same block? A In the same block.

Q That is East 56 th street? A Yes, sir.

BY THE COURT:

Q How many blocks away is that from Lexington avenue? Six block up? A About seven or eight blocks.

Q Six blocks up on 56th street? A Yes, then comes Third and Lexington.

Q That is a short block? A Yes.

Q How about the block between Third and Second? A That is a long block.

Q And between second and First? A Yes.

Q Then you lived in the neighborhood of the block between First and Second, you said? A Yes.

Q That is a long block? A Yes. I live in the same block, 56th street.

Q You mean in the same street? A Yes.

Q He lives nearer the river than you, the next block?

A Between First and Avenue A.

BY MR. ELLISON:

Q When you left the Riker-Hegeman company, that was quite a long while ago? A I left there about a year ago.

1077

CASE #2100

Q Why? A I started working for a fellow down on our block. I got a better job.

Q How long did you keep that better job? A About four five months.

Q How long were you out of work in May? A I am out of work about four months.

Q You were out of work in May? A Yes. I was working one or two or three days for a fellow also, for a peddler.

Q You were working for a peddler two or three days a week? A Yes.

Q Is this the peddler you worked for? A No, sir.

Q He was a peddler, wasn't he? A Yes, sir.

Q But you were not working on this day? A No, sir.

Q So when you made an appointment to meet the fellow that lives in your own block, you made an appointment to meet him eight blocks away from where you lived, is that right? A Yes.

Q How long were you standing at that corner of 50th street and Lexington avenue? A About from 3:25 to 4.

Q You were there for thirty-five minutes? A I was supposed to meet this fellow between three and four o'clock.

Q What four? A He was working in a laundry store in 57th street. He happened to be there on a push cart, and told me to meet him there.

Q Do you know the premises 315 East 56th street? A Yes.

Q Did you testify on the last trial that you used to hang out there? A Yes, sir.

CASE #2100

Q Who else hangs out there? A A few fellows.

Q Gove me the names of some of those fellows: I could not exactly name them all.

Q Name some of them? A Bob Ryan and Johnny.

BY THE COURT:

Q Johnny what? A I don't know his second name.

Q How about the defendant? A He was not hanging around there, he did not hang around there.

BY MR. ELLISON:

Q What paper did you say you read this story about? What paper? A The World.

Q Where did you get the World? A In front of 316.

Q Where did you get the World? A In front of 316 past 56th street, there is a candy store.

Q From whom? A Rosen.

Q At that time did you know the name of this defendant?

A No, sir.

Q You have not any idea what his name was, is that right?

A No, sir.

Q You didn't know at that time it was this defendant, did you? A No, sir.

BY THE COURT:

Q Who spoke first about this, you or the defendant? A I don't remember who spoke first.

Q You do not remember who brought up the conversation? A I was standing at the corner; I don't know who brought up the

CASE #2100

conversation.

Q I mean the time he spoke about this World article. Who spoke first? A I don't remember.

BY MR. STIEFEL:

Q Between the time, the 6th of May, and the day that this defendant was arrested, did he go to your house and speak with you up to the time you called his attention to the article in the Workd? A No, sir.

Q Then y u were the first one that spoke with him about it?

A Yes, sir.

BY MR. ELLISON:

Q You didn't know it referred to this defendant, and yet you called his attention to an article which was about him, is that right? A A few fellows were telling me "That is the fellow lives down in the next block."

Q And then you remembered him chasing a ball two or three weeks before that; is that right? A Yes; I can remember the fellow's face by seeing him.

Q But you remembered two or three weeks before you saw him chase a ball, is that right? A Yes.

BERNARD MARKENDORF, (314 East 56th street)
a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STIEFEL:

Q How old are you? A Thirty-four.

Q Do you know this defendant? A Yes, sir.

Q Did you work for him on the 6th day of May, 1915? A Yes, sir.

CASE #2100

Q How long before that time did you work for him? A About ⁷¹ six weeks.

Q What work did you do for him? A Some days I was working with him on the wagon. Sometimes he sent me out with a pushcart with vegetables.

Q When you were given goods by this defendant to sell from a pushcart, did this defendant tell you in what district you should sell them? A No.

Q To what district did you go when you received the pushcart from him with goods? A I worked from 48th street up to 58th street, and from Sixth avenue up to First avenue.

Q Did the defendant prior to May 6th, 1915, have occasion to look for you, and find you and the pushcart when you had some of his goods on it? A I don't understand.

Q Did he ever find you in any street before the 6th of May, 1915? A Sometimes he finds me.

Q What did he do with you? A He helped me along to sell the stuff.

Q You were not working with this defendant on the 6th of May, were you? A No, sir.

Q He gave you goods to peddle from a pushcart? A Yes, sir.

MR. STIEFEL: That is all.

MR. ELLISON: No question.

PAUL SCHMAIZ, (311 East 55th street) a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STIEFEL: Q How old are you? A Eleven

CASE #2100

years old.

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

Q What school do you go to? A P. S. 18.

Q What class are you in? A 6-B.

Q Do you go to Church? A Yes, sir.

Q What church? A St. Nicholas.

Q Where is that? A 48th street and Fifth avenue.

Q Do you know this man (pointing to defendant)? A I don't know what you mean.

Q Do you know Mr. Newman? A Yes, sir.

Q Did you know him before the 6th of May, 1905? A No, sir.

Q On the 6th of May, 1915, what time did you go home from school? A Sunday School?

Q No, the public school? A Three o'clock.

Q Then after three o'clock, state to the Court and jury after you left your house which way did you go? A From my house to church?

Q Yes. A I went straight up 55th street to Fifth avenue; I went along Fifth avenue to 48th street, then I went into Sunday school.

Q What time did you leave the Sunday school? A About four or half past.

Q Which way did you come home from Sunday school? A Along Fifth avenue to 50th street up to Lexington avenue to 51st street.

Q While you were walking through 50th street did you happen

CASE #2100

to see this defendant on 50th street? A Yes, sir.

Q What was he doing? A Running after a ball.

Q Did you notice where that ball went? A Yes, sir.

Q Where did it go? A In a hallway of the house next to a restaurant.

MR. STIEFEL: Is it conceded it is 125 East 50th street?

MR. ELLISON: Yes.

Q Did you see the defendant come out of the vestibule with the ball? A No, sir.

Q What did you see happen? A Running after the ball.

Q Did you see anything else about this defendant happening?

A No, sir.

Q Then you went up Lexington avenue? A Lexington avenue.

Q What did you see up Lexington avenue after you turned from 50th street? A Boys running up to 51st street and down 51st street, so I ran after them; they went into the police station.

Q Did you come back with them? A Yes.

Q What did you see? A The lady had hold of his coat.

Q Where? A In the door.

THE COURT: I will exclude what he saw when he came back.

MR. STIEFEL: I take an exception to the exclusion of testimony without objection having been raised.

THE COURT: It is the duty of the Court to exclude any testimony that is irrelevant and immaterial.

Q You saw this defendant being held by a woman then? A Yes, sir.

Q How soon after you saw this defendant being held by this

CASE #2100

woman did you see him enter the vestibule of the premises 125 East 50th street? A I don't quite understand.

Q Did you see him go into the vestibule at all? A I saw him running after a ball.

Q Was he held by the woman before he went in? A No, sir.

Q After he went in? A Yes, sir.

Q How soon after he went into the vestibule there did you see a woman hold this defendant? A When I came back.

Q How long was that after? A About three or five minutes.

Q When you came back from the station house you mean?

A Yes.

Q On your way walking from Park avenue to Lexington avenue, on 50th street, did you see any people on the street, within the roadway? A I don't understand.

Q Did you see any people walking on the street as you were walking on 50th street from Park avenue to Lexington avenue?

BY THE COURT:

Q Were you the only person on the street there? A No, sir.

Q Did you see any one else? A Yes, sir, in 50th street.

Q How many people about? A I could not tell you.

Q How many boys were playing with this defendant? A I don't know.

Q Were there more than two? A I don't know.

Q But you are positive they were playing ball? A Ye, sir.

CROSS EXAMINATION BY MR. ELLSION:

Q Did you say that after this defendant ran into the hallway

CASE #2100

75
you saw a woman go in there? Do you understand that? A No, sir.

MR. STIEFEL: I object to the form of the question.

Question withdrawn.

Q You saw that you saw this defendant Harry Newman run into the hallway, after a ball, is that right? A Yes, sir.

Q Did you see any woman follow him in there afterwards?

A No, sir.

Q You did not see any woman there at all, is that so?

A Yes, sir.

BY MR. STIEFEL:

Q But you saw a woman after you came around from 51st street?

A Yes, sir.

MARGARET HANDKE, (424 East 57th street) a witness called in behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. STIEFEL:

Q Do you know this defendant? A Yes, sir.

Q How long? A I know him over three years.

Q Have you dealt with him? A Yes, I have been buying stuff of Harry over three years. I never saw anything wrong in Harry in my life.

Q Do you deal with him? A Yes, sir.

Q What do you know regarding his character or reputation in the neighborhood?

MR. ELLISON: I object to the form of the question as improper and incompetent.

CASE #2100

THE COURT: I will exclude that, the proper foundation has not been laid.

Q You say you have been dealing with him for three years? A Over three years.

Q During that time did you know anything regarding his reputation? A I never saw him doing anything wrong in my life; I never did.

Q Did you hear after the conclusion of the testimony of the complainant's mother here, or at least the child's mother, did you hear the mother say anything while you were in court that day, after she had given her testimony, in the other part of the court there? A I have nothing to do with that.

Q What did she say when she got from the witness stand, in your presence? A She only claimed that Harry was after her little girl, that is all I heard her say.

Q Was that to the other witness she was telling that? A She was telling it outside.

Q That was to Mrs. Cameron? A Yes, she was telling it to another lady outside, a lady was along with her.

MR. ELLISON: No questions.

CHARLES MILLER (308 East 56th street), a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

Q What is your business, Mr. Miller? A I am in the livery business.

CASE #2100

Q How long have you been in business? A I guess thirty
years.

Q Do you know this defendant? A Yes, sir.

Q Has this defendant been dealing with you? A Yes, sir.

Q How long? A About two years.

Q During the time that you knew him do you know anything
regarding his reputation in the community? A Well, all I can
say I never saw a better or harder working boy in my life.

Q Do you remember on May 6th, when he took the horse and
wagon from you? A I don't exactly remember the day because he
takes them off and on.

Q What time does he usually bring back the horse and wagon?
A Twelve o'clock or one o'clock.

THE COURT: That is immaterial, I will exclude it.

CROSS EXAMINATION BY MR. ELLISON:

Q How long has he been hiring a horse and wagon from you?
A Off and on for two years; somewhere's like that.

Q Are you positive about that, Mr. Miller? A Well, no.

Q See if I can refresh your recollection. Do you remember
at the last trial you were asked these questions and gave these
answers: "By Mr. Stiefel: Has he been doing business with
you? A Yes. Q In what business? A Hiring a horse and wagon
in the vegetable business. Q How long a time has he been doing
that? A Six or seven months." A Off and on.

Q Did you say six or seven months last time or not? A I cannot
exactly tell you.

1007

CASE #2100

Q Did you say that then? A I think I said something like that.

BY MR. STIEFEL:

Q You have books to show otherwise? A Yes, I have.

BY THE COURT:

Q That was not true when you said six or seven months? A He has taken it off and on for two years, but I believe he has taken it steady for six months.

BY MR. STIEFEL:

Q He Hires the horse and wagon more steady in the spring and summer than he does in the winter time? A Yes.

Q When does he hire the wagon from you steadily?

THE COURT: That is excluded as immaterial.

HENRY LAWSON, (344 East 58th street) a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. STIEFEL:

Q What is your business? A Merchandise.

Q Do you know this defendant? A Yes, sir.

Q For how long a time? A About eight or nine years.

Q Did he have occasion to have a stand next to you? A Yes, sir.

Q For how long a time and where? A It must have been around five months or four months; four or five months.

Q How long do you know this defendant? A I know him for the last eight or nine years.

Q Do you know anything about his character and reputation

CASE #2100

79
in the community? A I know everything I know about him is good.

Q Did you ever see anything wrong during that time? A No.

Q You have had occasion to help him in the markets? A No, sir.

Q Did you ever buy any goods of him? A Yes, sir.

Q What time of the day? A Early in the morning.

MR. ELLISON: That is objected to.

THE COURT: Excluded as immaterial.

CROSS EXAMINATION BY MR. ELLISON:

Q Did you have any business dealings with the defendant?

A Only business going to the market buying stuff.

Q You went to the market with him every day? A Not every day, about four times a week; two o'clock in the morning or half past two.

Q For how long a time? A About four months.

Q Did he have a horse and wagon? A Yes, sir.

Q Did you go with him ever since he had a horse and wagon?

A Yes, sir.

Q How long did he have the horse and wagon from Mr. Miller?

A At the time I went to the market he did not have the horse and wagon from Miller, he had it from Mr. Geis.

Q You say he must have had it about six months, or something like that? A I could not tell you exactly.

Q Do you remember the last trial, - being on the witness stand? A Yes, sir.

Q Do you remember being asked questions and giving answers?

A Yes, sir.

CASE #2100

Q Do you remember this question when I cross examined you:
"Q You told this jury he had called for you every morning since
getting the horse and wagon from Miller? A Yes, sir. Q How
long is that? A About six weeks; I could not tell you exactly."
Is that what you said? A Listen, that is what I said; it is
on and off you know.

BY MR. STIEFEL:

Q On and off you say? A Yes.

Q How many times before that six or seven weeks? A I
could not exactly tell.

Q About? A About four weeks steady, and then after that it
was on and off.

MR. STIEFEL: That's the defendant's case.

MR. ELLISON: The People rest.

MR. STIEFEL: I renew my motion, may it please your
Honor, made at the close of the People's case, and further
upon the ground that there is no evidence on the part of
the People which shows that there has been any penetra-
tion.

THE COURT: Motion denied. Exception taken.

MR. ELLISON: I take it it is conceded by the defend-
ant and his counsel, that the complaining witness and the
defendant are not married. I can ask the defendant another
question on cross examination on that.

THE COURT: well, call the defendant to the stand.

1090

CASE #2100

H A R R Y N E W M A N, the defendant, recalled to the stand, testifies as follows:

BY MR. ELLISON:

Q Are have not married, and have never been married or divorced from Beatrice Hunter, the complaining witness, have you? A No.

The repsective counsel sum up to the jury.

THE COURT: Gentlemen of the jury, I think it is too late to give this case to you tonight, because I do not wish to detain you here long in this way, so I will declare a recess until tomorrow morning at half past ten. In the meanwhile you must be very careful not to talk about this case, you must not only refrain from discussing it among yourselves, but you must not talk about it to any stranger. If any stranger should attempt to speak to you about it, you must inform the court. You must not come to any conclusion on the question of the guilt or innocence of the defendant until the case has been submitted to you by the Court, and until you have heard everything that has been said. That is the time to make up your minds and not before that.

(At this point the Court takes a recess until 10:30 o'clock, September 21st.)

CASE #2100

THE PEOPLE vs HARRY NEWMAN.

THE COURT'S CHARGE, Mulqueen, J.

Gentlemen of the Jury, this defendant is charged with the crime of rape in the first degree. The indictment alleges that in the County of New York, on the 6th day of May, 1915, with force and arms in and upon a certain female, not his wife, to wit, one Beatrice Hunter, the defendant did feloniously make an assault an act of sexual intercourse with her, the said Beatrice Hunter, then and there feloniously did perpetrate against the law of the said Beatrice Hunter, and without her consent, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

The same allegation is made in the second count of the indictment with the addition of the allegation that the said Beatrice Hunter by reason of her immaturity did not then and there offer resistance to the said act, against the form of the statute in such case made and provided and against the peace of the People of the State of New York and their dignity, and it is also alleged in the third count of the indictment that he was guilty of rape in the first degree by reason of this assault on Beatrice Hunter, and the sexual intercourse with her, because by reason of her youth

CASE #2100

and ignorance she was then and there unconscious of the nature of the act.

Now, you understand that the indictment is the charge. It is the complaint that the People of the State of New York make against this defendant. This is an action between the People of the State of New York and Harry Newman. That term "People of the State of New York" means organized society in this State, the ten millions of people more or less who live within the borders of this State, who wish to work out their own happiness free from the unlawful interference of others and who wish to enjoy their right to live and seek happiness without being interfered with by others; and they make laws to regulate the conduct of all the people who wish to live in this State, and one of those statutes forbids the act that this defendant is alleged to have committed against the complainant Beatrice Hunter.

The People regard the purity and chastity of our women as of the most vital importance to the State, and they wish above all things to protect young girls from Brutal and vicious men, and therefore they have passed the law to which I call your attention.

Section 2010 of the Penal Law provides as follows:

"A person who perpetrates an act of sexual intercourse with a female not his wife, against her will or without her consent: first when her

CASE #2100

84
1094
resistance is forcibly overcome, or when she is incapable of giving consent by reason of mental or physical weakness, or immaturity, or any bodily ailment, she does not offer resistance, or when she is, at the time unconscious of the act, and this is known to the defendant."

Now, the theory of the law is with very young children, and you saw Beatrice, and you can determine how old she is, -- she said she was six, -- whether she knew what sexual intercourse was, whether she was conscious of the nature of the act, which it is alleged defendant committed with her. That is one thing. And secondly whether she was mature enough in judgment to realize the great peril she was in, according to the People of the State, to make resistance. If you find that she was either immature by reason of her years, and that she was unconscious of the gravity of the act, and this defendant had sexual intercourse with her, under those circumstances, even without any resistance on her part, the law considers that act rape in the first degree.

If the defendant made an attempt to have sexual intercourse with her under those circumstances, but failed for any reason to accomplish his purpose of having sexual intercourse with her, if he was unable to penetrate her for any reason, but endeavored to have sexual intercourse with her by inserting his private parts into her private parts,

CASE #2100

85
if he made that attempt, then he would be guilty of the crime of an attempt to commit the crime of rape in the first degree. So that under the counts of the indictment that I have read to you, you will find this defendant either guilty of rape in the first degree, if you think the evidence warrants it, or of an attempt to commit the crime of rape in the first degree.

There is another count in the indictment, assault in the second degree. The allegations in that count are that this defendant, with force and arms made an attack upon Beatrice Hunter, who was a female not his wife, feloniously, with intent an act of sexual intercourse with her, the said Beatrice Hunter, against her will and without her consent, then and there did feloniously perpetrate against the form of the statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

That is, if this defendant had that girl in that vestibule, whether he brought her in there or not, whether she went in of her own accord, or whether she was brought in by him, if being in there he opened her drawers, and did as the child said, without using his private parts, against her consent but with the intent of preparing her to attempt that sexual intercourse with her, if that was his intent in laying hands on her, even although he made no effort to have

CASE #2100

86
1096
the actual act of sexual intercourse, he would be guilty of the crime of assault in the second degree.

Therefore if he did have sexual intercourse with her, if you are satisfied of that, beyond a reasonable doubt, and of all the other elements alleged in the indictment, and in the law as I will explain it to you, he will be guilty of rape in the first degree. If he tried to have sexual intercourse with her, by endeavoring to insert his private parts into her private parts, but failed for any reason, then he would be guilty of an attempt to commit the crime of rape in the first degree.

If he found her in that vestibule and proceeded to lay hands on her, open her drawers, lift up her clothing, and bruise her person in the way that has been testified to here, but not with his private parts, but with the intention of having sexual intercourse with her, then he would be guilty of the crime of assault in the second degree.

Now the statute that I have read to you defining rape is very clear. There is a rule defined in Section 2011

that any sexual penetration, however slight, is sufficient to complete the crime. That is, if his privates entered her body to any degree, no matter how slight that degree was, if he actually penetrated into her private parts, that would be the crime of rape, so far as that element of it is concerned.

CASE #2100

And there is another provision here, which is a rule of evidence, that no conviction can be had for rape and defilement upon the testimony of the female defiled unsupported by other evidence. You will understand that the defendant is not to be deemed guilty because he has been arrested and indicted. Those are only steps in the prosecution of a person charged with crime. The indictment is in the nature of a complaint served on him by the People of the State of New York. It is intended to let him know what acts are complained of, and it is also intended to let the jury know at the time of the trial what the charge is.

So the first question that you must ask yourselves is: What is the charge? I think I have already explained that fully to you. The charge is that he committed rape in the first degree, and in addition, as I said, of an attempt to commit rape in the first degree, and also the charge of assault in the second degree. I have already read you the statute defining rape in the first degree.

Assault in the second degree is defined in Section 242 of the Penal Law. Subdivision 5 of that section is that one who assaults another with intent to commit a felony is guilty of assault in the second degree.

Rape in the first degree is a felony. If this defendant had committed sexual intercourse with a child six years of age, he would be guilty of a felony, and if he

CASE #2100

placed his hands on her, committed any assault on her, however slight, with the intention of committing rape in the first degree, that would be an attempt to commit a felony, and therefore assault in the second degree under that section.

Of course you understand that in these criminal actions there is a sharp line dividing the Court from the jury. It is the duty of the Court to see that defendant receives a fair trial; that means an American trial, a trial according to law, not a trial specially made to suit his convenience, but a trial to which every man charged with crime is entitled. He is entitled to be represented by counsel, to have a voice in the selection of his jury, to be confronted with the witnesses against him, to have the right of cross examining them within proper limits, and the right to call witnesses in his own behalf. It is also his right that the Court should correctly state the law to you. I have done that, and he has had a fair trial.

It is the duty of the Court to exclude from your consideration every element, whether it be in the attempt to introduce evidence which has no probative value, and is only intended to confuse the issue, and also to remove every illegal action and consideration from your mind, and to present the law clearly to you, and then the Court's work is done.

CASE #2100

You are the sole and exclusive judges, the supreme judges of the facts, and since facts are proved by witnesses, you are the sole, exclusive, supreme and final judges of the credibility of witnesses. That is, you decide which of all the witnesses that appeared on the stand here are worthy of belief, and you decide what has been proved by their testimony, and then, if, after you have weighed all the testimony, keeping the law in mind as the Court gives it to you, you are fully convinced to a moral certainty that he is guilty, then you must pronounce him guilty, because that is what is meant by proof beyond a reasonable doubt.

The law is that a defendant in a criminal action is presumed to be innocent, and unless the evidence satisfies you of his guilt beyond a reasonable doubt, he must be acquitted, but if the evidence does convince you of his guilt to a moral certainty, then you must find him guilty. If the evidence leaves you undecided, if you cannot say that you are fully convinced that he committed rape in the first degree, or an attempt to commit rape in the first degree, or assault in the second degree, you must acquit him.

A reasonable doubt is a doubt that is based on reason. The term explains itself. Not a doubt that is based on a desire to avoid doing a duty that is disagreeable; not a doubt that a man might

CASE #2100

say, "Well, this boy that is on trial, he is not responsible for his acts." He is responsible for his acts, and if the law convinces you that he committed a crime, you must say so. A juror, who through sympathy would be swerved from doing his sworn duty would be unworthy of sitting in a jury box and enjoying the privileges of American citizenship, and so, on the other-hand, a man who would not be convinced of the guilt of a defendant, whom the evidence did not fully satisfy to a moral certainty, would be equally blameworthy if, by reason of any prejudice, he rendered a verdict of guilty; so that I speak thus to you, because you must free your minds of every thought but the desire to do your duty. You have sworn to do your duty, now do it, without any thought of the consequence. Every man on that jury will know in his heart what effect this evidence has produced in his mind. You must steel your minds against any prejudice against the defendant, because in charges of this kind sometimes the minds of men are inflamed so that they cannot coolly and calmly weigh the evidence.

You must not be impressed in that way. You must weigh this evidence calmly and coolly and judicially, and then you must do your duty. Every man on the jury will know the state of mind in which he is left by an examination and a consideration of this evidence.

The law does not require proof to an exact certainty.

CASE #2100

The law does not require that men should be brought here to say they found the defendant in the act of having sexual intercourse with this girl. Such proof as that could never be found, or rarely be found.

The People here claim that they have shown you that he took this girl from the street. They have called the witness Banks who said that he has been employed two years in that neighborhood; that he had seen this child with the woman whom he called her mother, and it is entirely immaterial whether the woman is her mother or not, provided you believe that it is a female child of six years. It does not make any difference who her mother is, or who her father was, she is entitled to the protection of the law as a female child. He said that he saw that child with her mother, or a woman presumed to be her mother, opposite where he was employed, frequently in the last two years, and that on this day, noticing that the child was on the street, and that a strange man had come along and taken her into a hall, he called the attention of her mother to her. Why he did that is entirely immaterial. I do not think any man would have to ask why he did it. His opinion and his thought as to what was going on in that hallway is of no value. He did what he thought was right, and you are not to reject his testimony because he could not give a long and learned explanation of the reason for his action, if

CASE #2100

you believe that he did as he says he did.

The mother, or the woman who says she is the mother, corroborates him to the effect that her attention was called by Banks; that she went into that hallway with a Mrs. Cameron, and that she saw him crouch in the way she has illustrated to you, with her child in the corner; that the child's dress was up, that her drawers were open, and that this man's trousers were open, and his private parts exposed.

Then you have Dr. Gibbs, who testified that for a number of years he had been physician for the Society for the Prevention of Cruelty to Children, a society organized to prevent such acts which the defendant is alleged to have committed. He examined that child the next day, this occurrence having occurred about four o'clock one afternoon, and he examined her the next morning and found her hymen had been ruptured, and you recollect he described her hymen to you as a membrane which guards the entrance to the vagina, which is within the body, inside of what he called the lips of the woman's private parts, and that that was ruptured and that there was an abrasion at the entrance to the vagina. Of course the doctor could not say that the defendant did that, but his testimony was not given for that purpose. His testimony was that some blunt instrument had penetrated that girl's private parts within a short time,

1102
CASE #2100

and, as he has said himself, that it is possible for one experienced in the examination of a woman's privates, as he is from the thousands of cases that he has had, to say that that was within a recent time.

The ambulance doctor who was first called testified that he found an abrasion within the private parts, but that he did not discover the perforation, or puncture or rupture of the hymen, but that there was such an abrasion of the girl's private parts as would be made by rubbing against it, as I believe he put it.

That is the testimony for the People. On the other hand, defendant says that he is a peddler, a hardworking man, that on this day his man was out, that he went looking for him. It does not make any difference why he was in that street. The People do not allege he went forth looking for a little girl to ruin, so it is immaterial why he was in that street, but the question is what did he do there. He says, to explain his presence in the hall or in the vestibule, which he does not deny, that while walking through that street, two boys, strangers to him, who were playing, asked him to join their game; that he did join their game, that the ball went in the hall, and that he went in, and was coming out with the ball in his hand, when this woman made this unfounded and villainous attack upon him, as he says.

CASE #2100

It is for you to consider whether that story is true or not, and reasonable in view of all the facts and circumstances that you deem established by the testimony. He called one boy who lived a block away from him, in 56th street, who also happened to be waiting for some one about four o'clock that day down in this street. He said he had never seen him before, and he noticed him go in there after a ball. He then went away. And then the other boy who says he also saw him go in there after a ball, and who happened to be coming through there at the time. He says he went around the station house and came back afterwards.

As I said, facts are proved by witnesses. They are not inferred from anything else; you must confine your attention to the testimony. Do not go outside the limits of the case, as it is called, and make up your minds to examine that question honestly, to be animated solely by the desire to do your duty, to do no injustice to the defendant, but likewise to do justice to the People of the State of New York.

There is no rigid rule of any kind really prescribed by the law to guide you in the discharge of your duty to determine the credibility of the witnesses. All that the law asks you to be is, first, honest men; second, to use the good sense and good judgment that you employ in your own immediate affairs of life, and to banish every thought

1104
CASE #2100

25
1105
of prejudice, every thought of vengeance, and every thought or desire to shield the guilty, but to be absolutely fair, and then to use the good sense and good judgment that you use in your own immediate business affairs.

You may consider the manner of the witness, the inherent probability or improbability of his story. Ask yourselves: Is there anything improbable in the story told by Banks and the others, or in the story told by the defendant and his witnesses? Which witness has any interest in the controversy? Banks says he never saw him before, and defendant says he never saw Banks before. What interest would Banks have, and what interest would the mother have in making a story against a man whom she had never seen before? What motive, if any, has a witness on either side to testify truthfully or untruthfully? Have the witnesses for the People been deceived? Did they really see what they say they saw? Or are they wilful perjurers? Did they concoct the story to ruin a man they never had seen before? Of what benefit to them would that be? And so the witnesses for the defense are entitled to be treated in the same way. The manner of the witness, the interest of the witness, the motive of the witness, and relationship, if any, of the witness. Is the defendant, for instance, a disinterested witness? Has he a motive to commit perjury? Is he a truthful man, telling the truth, or is he a criminal,

CASE #2100

caught in the commission of a heinous crime and telling you what is not true in order to avoid the consequences of it?

But the mere decision on your part that a witness has a personal motive to tell what is not true, should not control your judgment. A witness may have a motive to tell what is not true, and yet actually tell the truth. You have to determine that coolly and calmly. I am merely suggesting to you tests which you can apply from your own knowledge and experience of life to all the witnesses upon both sides.

As I said, you may believe all of the testimony of any witness, or you may reject it all as unworthy of any belief, or you may believe part and reject part, or you may believe it all, just as you think it ought to be regarded.

Now, with regard to the corroboration that the law makes necessary. This girl told her story. She was not sworn, she was not old enough to be sworn and understand the nature of an oath, in the opinion of the Court, and in view of the statute, so that she told an unsworn story, and on her testimony no conviction could be had unless she is corroborated. She says she was in the hall. The defendant says he was in the hall or vestibule with her, so that it is for you to say whether that is sufficient corroboration on that point. Secondly she says she is a female and Dr. Gibbs

CASE #2100

and the ambulance doctor corroborate her on that, and that she is six years of age, therefore the law says in consequence of her immaturity by reason of her years, that she is unconscious of the nature of the act of sexual intercourse; that she could not offer any resistance, that she could not be aware of the great danger to which she was subjected, or the damage which was about to be inflicted upon her, the great injury, and that therefore the act, if one was committed, would be rape in the first degree.

Then the other testimony offered as corroboration as to her age and immaturity, and her sex. The testimony of Banks is also offered as corroboration of her story of what happened, and the testimony of her mother that, having been warned by Banks, she ran to this hall and found the defendant in the position that he was. The girl says that defendant told her he would make her laugh, as he put it, and took down her drawers, and put his finger into her. Whether she was mistaken, as to whether it was his finger or his private parts, it is for you to say. If he did put his finger into her it would not be rape, it would be assault in the second degree, and you will take that in connection with the testimony of the woman as to his person being exposed and his trousers down, and determine his purpose in dealing with her as he did, if he had anything to do with her.

On the other hand, if you believe his story, or if

CASE #2100

his story and the story of his witnesses raises any reasonable doubt in your mind as to what happened in that hallway, then you must acquit him.

Gentlemen of the jury, you must take this case, and you must realize that you are doing the most important work that citizens are ever called upon to do in time of peace. The law is intended to protect us all. The chastity of the female is essential to the preservation of the race. Girls, especially, must be protected from vicious attacks. On the otherhand, a man charged with this crime must also be tried fairly, and the evidence must satisfy you of his guilt beyond a reasonable doubt. It must not be the result of prejudice or passion. Nor should your verdict be swayed by any thought of what may happen to the defendant if he is guilty. That is a matter that is left solely to the Court. You must not interfere with the prerogative of the Court. The Court has not sought to influence your judgment. It is not the business of a Court to find the verdict. That is your business. The Court has not formed or expressed any opinion. The Court has simply endeavored to confine the evidence within the limits prescribed by law, to explain to you your duty, and to explain to you the legal principles which should guide you in arriving at a conclusion, in discharging your duty to the defendant and to the People.

CASE #2100

If you are satisfied, therefore, beyond a reasonable doubt, if you are fully convinced to a moral certainty that the defendant is guilty either of rape, or of an attempt to commit the crime of rape, you must say so. If you are not satisfied that the assault had proceeded to the extent required by law to constitute rape, that he had not as yet made any attempt to insert his penis into her, but that he had treated her as has been testified to, with the intention of having sexual intercourse with her, then he would be guilty of assault in the second degree.

If he had nothing to do with that at all, if he went in there to get the ball, and did not touch her, and was coming out, as he said, he is not guilty. So therefore, you will weigh the testimony and pronounce him either guilty of rape in the first degree, or of an attempt to commit the crime of rape in the first degree, or of assault in the second degree, or not guilty; either of those four verdicts. There is only one crime, and one verdict here.

THE COURT: Any requests to charge?

MR. ELLISON: No, your Honor.

MR. STIEFEL: I ask your Honor to charge the jury that under the law it is an essential ingredient that penetration must prevail on the victim defiled.

THE COURT: Yes, to constitute the full crime of rape in the first degree.

CASE #2100

MR. STIEFEL: I am talking about rape in the first degree, yes, and that if the jury fail to find that there was any penetration, they must acquit the defendant of that particular charge or count in the indictment.

THE COURT: They may not find him guilty of rape in the first degree, but they may find him guilty of an attempt to commit rape in the first degree.

MR. STIEFEL: Such testimony must be beyond a reasonable doubt in the minds of the jury.

THE COURT: I have told them repeatedly that in my charge, and charge them again, if you wish. I so charge. Dr. Gibbs's testimony is before you on that point.

MR. STIEFEL: Dr. Gibbs's testimony was not corroborative, in so far as that it was not sufficient under the law.

THE COURT: Dr. Gibbs said point blank that that girl's hymen was ruptured by some blunt instrument. If they think that blunt instrument was his private parts, that is penetration.

MR. STIEFEL: The doctor also testified further that it could be done by something else.

THE COURT: Yes, that is what I said, but they must take all the circumstances into account, the testimony that he was found there with his clothing down, and his person exposed, and his relative position to the girl. You

CASE #2100

must not decide the case on one particular point, but take the whole case.

MR. STIEFEL: If in the event they believe the testimony of the mother of the child, Mrs. Hunter, that she saw the boy with his privates exposed, that that would not be sufficient to convict of rape in the first degree, attempted rape in the first degree, or assault in the second degree.

THE COURT: I decline to so charge; they must take that evidence in connection with all the evidence in the case.

MR. STIEFEL: Exception.

MR. STIEFEL: I ask your Honor to further charge the jury that in the event the prosecution had evidence which it did not bring before the jury that the jury have a right to take into consideration that such evidence would be detrimental to the prosecution.

THE COURT: I decline to so charge.

MR. STIEFEL: Exception.

THE COURT: There was one witness mentioned here, Mrs. Cameron, whom the People did not produce, but the defendant knew all about that witness, and they could have produced her if they wished to. The rule is if a witness is equally accessible to both sides that no inference can be drawn for failure to call that witness. If this defendant's

CASE #2100

wanted lawyer her he could have subpoenaed her, and if the People wanted her they could have subpoenaed her, so that you must not form any inference from the failure to call her, if you find she was equally accessible to both, but if there was a witness solely known to one side, and solely within the control of one side, and if that witness might give testimony which the jury thought material, they might take into consideration the failure of that particular side to call that witness, but that would not be a controlling element in a case, one way or the other. It would merely be a circumstance that may be considered in connection with all the other facts and circumstances in the case.

MR. STEIFEL: But that the prosecution, having called this witness on the first trial, and that not being known by the defense that this witness called on the first trial was not to be called on the second trial, that they may take into consideration that such evidence brought by the witness on the first trial, and not submitted on the second trial, would be detrimental to the prosecution.

THE COURT: I decline to so charge. You had a whole day to call any witness you wished.

MR. STEIFEL: Exception.

THE COURT: You had more than a day to call any witness after the People rested.

MR. STEIFEL: I did not know the whereabouts of this

CASE #2100

Cameron woman.

THE COURT: The People rested, and the jury will take my instructions on that.

MR. STIEFEL: I further ask your Honor to charge the jury that if in the event the District Attorney had evidence to submit to the jury by way of exhibit, and the failure on the part of the District Attorney to produce such evidence by way of exhibit, that they can infer it would be detrimental to the People's case?

THE COURT: I decline to so charge; you must take the case as it is. If there is enough evidence in the case to convict, convict him; if there is not enough evidence to convict, you will acquit him. The District Attorney is responsible for the trial of his case, and if he thinks that evidence is unnecessary or cumulative why it is his judgment, but if there is not enough evidence in the case, why, acquit the defendant. If there is enough evidence to convince you of his guilt beyond a reasonable doubt on any of the counts, why say so.

MR. STIEFEL: When that sexual intercourse is presumed, there must be some specimen of semen on the person or upon the clothing.

THE COURT: I decline to so charge.

MR. STIEFEL: I take an exception to the refusal of your Honor to request the jury on that.

CASE #2100

MR. STIEFEL: I ask your Honor to charge the jury that in order to have sexual intercourse with a female, there must be some specimen of semen on the person or clothing of the female defiled.

THE COURT: I decline to so charge.

MR. STIEFEL: I take an exception.

THE COURT: There is no testimony here that her person was examined for semen. Dr. Gibbs made no examination of her person, nor did the other doctor, for that.

MR. STIEFEL: The doctor said there was an abrasion, and also said there was no penetration in the vagina.

THE COURT: That was his opinion. Dr. Gibbs's opinion was that there was penetration.

MR. STIEFEL: That was nearly twelve hours after.

THE COURT: Is there any further instruction you wish?

MR. STIEFEL: That is all.

(Jury retire at 11:40 a. m.)

(The Jury return at 1:15 p. m.)

THE CLERK OF THE COURT: Gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN: No, sir.

THE COURT: I sent for the jury because I received this communication:

"Your Honor, we would like you to specify between the three charges of the indictment. Foreman."

THE COURT: The crimes charged are rape in the first

CASE #2100

degree and assault in the second degree. Those are the charges that I submitted to you. I will read the law defining rape in the first degree to you again. It says:

"A person who perpetrates an act of sexual intercourse with a female not his wife, against her will, or without her consent, is guilty of rape in the first degree."

That is one thing. Secondly, where the female consents, or does not offer any resistance, the crime may be in the first degree under certain circumstances, to wit, if the female is incapable of giving consent by reason of mental or physical weakness or immaturity; that is, if this child was so young and immature that she was unable to give any consent, it would be rape in the first degree for any man to have intercourse with her. It is for you to say whether that child was immature,-- she is six years old -- and whether she could understand the nature of sexual intercourse and give her consent to it, and if she could not, any man that had sexual intercourse with her would be guilty of rape in the first degree.

Another case where it would be rape in the first degree, is where the female is at the time unconscious of the nature of the act, and this is known to the defendant. It is for you to say whether a child of the age of six years is conscious of the nature of sexual intercourse; and whether the defendant knew that. If this girl was so

CASE #2100

immature, or was not conscious of the nature of the act of sexual intercourse, and this defendant knew that, and yet he attempted to have sexual intercourse with her and made an attempt, such as I said to you, attempting to put his privates or his penis into her private parts, whether he succeeded in the act or not, he would still be guilty of a crime, not the full and completed crime, but the crime of an attempt to commit the crime of rape in the first degree.

In order to determine whether there was rape committed or not, you have to find out whether there was any penetration. If he attempted to have sexual intercourse with her, and did an act tending to effect that intercourse, but failing for any reason to accomplish it, if he failed to penetrate her, it would be an attempt to commit the crime of rape in the first degree. In other words, it would not be rape in the first degree, but an attempt to commit the crime of rape in the first degree, and if you have a reasonable doubt as to whether her hymen was ruptured or not, you could not find him guilty of the full crime of rape in the first degree, but could find him guilty of the crime of an attempt to commit rape in the first degree, if he did make the attempt to have intercourse with her. Furthermore, if his purpose was to have sexual intercourse with her, to insert his privates into her privates, to penetrate her and to have intercourse with her,

CASE #2100

but before he could accomplish that he was interrupted, if he had done acts to prepare her for that, if he had taken her and taken down her drawers and taken out his own private parts, and lifted up her dress, and got ready to have sexual intercourse with her, but was interrupted, those acts would not be the crime of rape, because it had not progressed far enough to be rape, but his treatment of her, if he laid his hands on her, would be an assault, and if his purpose in committing that assault was to have sexual intercourse with her, the law makes that the crime of assault in the second degree.

If you are satisfied beyond a reasonable doubt that a crime was committed by this defendant, but if you have a reasonable doubt as to the degree of crime so committed, you could only find him guilty of the lowest degree of crime, which would be assault in the second degree.

If you find he did commit any assault upon her, or take her and unbutton her clothes, and lift up her dress and insert his finger into her private parts, or bruise her private parts, without his using his own private parts, but with the intention to insert his private parts, that would be assault in the second degree. If he went further and did actually attempt to insert his private parts into her private parts, but failed to penetrate her because she was too small, or for any other reason, merely bruising

CASE #2100

her with his private parts, that would be an attempt to commit the crime of rape in the first degree.

If you find that he did go further and actually penetrated her further with his private parts, so that he ruptured her hymen, which, as the doctor told you, was a membrane protecting her vagina, her innermost private parts from the outside world, and ruptured that, the law looks upon that as the consummation of the act, because it says any penetration, however slight, is sufficient to constitute the crime of rape.

Is there any further instruction the jury wants on this point?

MR. STIEFEL: I ask your Honor to instruct the jury if they came in for any other instructions?

THE COURT: I have given them the specific instruction which they requested.

MR. STIEFEL: I ask your Honor to instruct the jury on the discrepancy in the testimony of the two doctors, who testified -- the first doctor that he made the first examination immediately after the alleged occurrence, and he testifies there was no penetration, and twelve or fifteen hours thereafter the other doctor testified different, -- that the jury must take into consideration the discrepancy of the testimony on that score.

THE COURT: If that testimony raises a reasonable doubt

CASE #2100

in their mind as to whether there was penetration or not, they must give him the benefit of the doubt. The crime would not be the crime of rape in the first degree, but could still be the crime of an attempt to commit the crime of rape in the first degree.

(The jury retire at 1:23 p. m.)

(The jury return at 2:35 p. m.)

THE CLERK OF THE COURT: Gentlemen of the Jury, have you agreed upon a verdict?

THE FOREMAN: Yes, sir.

THE CLERK OF THE COURT: How say you, do you find the defendant guilty or not guilty?

THE FOREMAN: Guilty of an attempt at rape in the first degree.

THE CLERK OF THE COURT: Hearken unto your verdict: You say you find the defendant guilty of the crime of an attempt to commit the crime of rape in the first degree, so say you all?

THE FOREMAN: Yes, sir.

MR. STIEFEL: I ask that the verdict of the jury be set aside on the ground that it is contrary to the weight of evidence, contrary to law, and upon the objections, and under Section 469 of the Code of Civil Procedure.

THE COURT: Motion denied.

CASE #2100

MR. STIEFEL: Exception.

MR. STIEFEL: I move for an arrest of judgment under
Section 469 of the Code of Civil Procedure.

THE COURT: Motion denied.

MR. STIEFEL: Exception.

THE COURT: I will give you a week, and at that time
you may make any other motion you deem advisable.

(Defendant remanded for a week.)

110
1120
CASE #2100