

you remember that, don't you? (No answer.)

Q Don't you remember it? A I think I do.

Q You remember that you took an oath to tell the truth, do you remember that? A Yes, sir.

Q Now were these questions put to you, and did you make these answers: I want you please to pay close attention to my reading of them, and if you don't understand them stop me. I will try to read them to you again. I am reading from page 19 "Your mother testified that you left on the 9th of April. Do you remember what happened to you on that day? A. No, I don't

Q. The 9th of April -- before the ninth of April were you sick? A. Not that I know of.

Q. Do you know who you went with from your home to New York? A. No.

Q. Did you meet with any one? A. I don't remember.

Q. Do you know a man named Harry Beatty? A. I have heard that name.

Q. How did you come to hear that name? A. Well, I don't know. I had it on a piece of paper."

Do you remember testifying to that. A I do.

Q Was it true? A It was.

Q Was it true that you could not remember who you came from Newark to new York with? A No, sir; I could not.

Q Was it true or not true? A True.

Q Who did you come from Newark to new York with? A I

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came by myself.

Q Then what did you mean when you swore in that other court: "Q. Do you know who went with you from your home to New York", and you said no.

Q. Did you go with any one. A. I don't remember."

Now which is the truthful story that which you swore to there or that which you are swearing to here? A When I was up in the police court it was a shock; I could not remember.

Q What shock are you referring to, being arrested? A No, sir.

Q Well, what shock did you have on that day? A Not on that day.

Q When you went to the police court? A It was from the house in Stuyvesant street.

Q But you had been living for five days nearly in the house of that other woman? A Yes, sir.

Q Did you have any shocks there? A No, sir.

Q Did this defendant do anything to you there? A No, sir.

Q Make any approach to you at all while there? A No, sir.

Q You were treated in that house in a very kindly way, were you not? A Yes, sir.

Q You were treated as if you were a member of the family, were you not? A I was.

Q You mingled with the children of the household, didn't

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you? A Yes, sir.

Q You ate at the same table with the family? A I did.

Q You took part in all their family affairs, didn't you?

A Yes, sir.

Q Is that so? A Yes, sir.

Q They are some religious observances, didn't they, at that time, some ceremonies at the time you were living there. Perhaps I can remind you it was a Jewish holiday, wasn't it, the Passover, is that right? A Yes, sir.

Q Answer me please? A Yes, sir.

Q They sat in the evening of the passover around a table and had a service relating to the Passover in the family, didn't they? A Yes, sir.

Q You sat with them as a member of the family, and took part in these services with them, didn't you? A Yes, sir.

Q You were given a book to read, and you read the service out of the book while these services were going on, didn't you? A No, sir.

Q Well, you heard the services read, didn't you? A Yes.

Q Did you? A Yes, sir.

Q Now then you say that in the police court when you got there that was on the 23rd of April, which was several days after you were arrested, isn't that so? A Yes, sir.

Q Is that so? A Yes, sir.

Q Where were you between the time of your arrest and the

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time you went to the police court? A In the hospital.

Q In the hospital? A Yes, sir.

Q Well, what shock were you suffering from on the day you gave your testimony in the police court. Can you tell me?

A Just what I told you.

THE COURT: What did you tell him. What was it?

MR. LEVY: Answer the Judge's question. What was the shock?

THE WITNESS: The shock of the day in Stuyvesant street.

MR. LEVY: Your Honor heard me read certain contradictory statements?

THE COURT: Yes.

BY MR. LEVY:

Q Now, I will go on. Were these questions put to you and did you make these answers: "Did you have any other name written on the piece of paper? A. I don't remember.

Q. Had you ever met this man whom you told a police officer was Harry Beatty? A. I can't remember anything. I never met him here."

Did you say that? A I don't remember.

Q Under oath? A I don't remember.

Q Were these questions put to you "Never met him here-- here where I am in New York.

Q. Where did you meet him? A. I don't know. Did you say that? A Yes, sir.

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Q Was it true? A I couldn't remember that.

Q You couldn't remember that? A No, sir.

Q Now Miss Viola, have you ever been in Boston? A No.

Q Did you ever get to Boston with Peatty? A No.

Q Now then were these questions put to you, and did you answer under oath "Did you go with him to Boston? A. Not that I know of."

Q Was that the answer? Did you say that? A "No that I know of". Did you testify to that as I have read it to you just now? A Yes, sir.

Q Were these questions put to you, and did you make answer under oath as follows: "Do you know what happened to you from the 9th day of April until today (that day being the day that you were being examined in the police court.) I will read it again. "Do you know what happened to you from the 9th of April until today. Do you know what has been happening to you? A. No; but I know since I have been here --

Q. Since you have been where? A Here in New York. Since I met Mr. Sherman.

Q. When did you meet him? A On Sunday.

Q. What date, do you know? A No, I don't know the date.

Q. You said last Sunday? A. No, it wasn't last Sunday, it was the Sunday before. The last Sunday I was in the hospital,

Q. And the Sunday before was the 13th, do you know that?
A. I don't know what date it was.

Q. Do you know what happened to you from the day you left

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your mother in Newark until you met this man Sherman in New York? A No, sir, I don't remember.

Did you answer that that way? A Yes, but I remember now.

Q What is that? A Yes, but I remember now.

Q Didn't you remember what happened to you from the time you left your mother until you met Sherman? A I did not remember then.

Q Well, has your memory come back to you? A Yes.

THE COURT: Let me ask you this question. Does that question which you just propounded cover the period when she says that intercourse was had with her?

MR. LEVY: It brings us up to that evening. From the time she left home including the time she was with Hollingsworth?

MR. CAFFEY: It includes the period before she left Sherman.

BY MR. LEVY:

Q Were these questions put to you: "Do you know what happened to you". This was in the police court on the 23rd of April.

Q. Do you know what happened to you at all? A. No.

Q. Nothing at all? A. Nothing at all.

Q. Your mind is a blank? A. I don't know.

Q. What were you doing in New York that day? A. I don't know". Now did you answer those questions as I have read to you from these official minutes? A I don't remember.

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

Q Did you lose your memory again? A No, sir.

Q You don't remember then what you swore to in the police court before the Magistrate? A No, sir.

Q Then I want to ask you-- when you were arrested did the police ask you your name? A I don't remember.

Q Did the police ask you when you were arrested where you lived? A I don't know.

Q Did you give any one the name of Mayton or Martin? A No.

Q Pause a moment and think. Try to recollect? A Not that I know of.

Q Did you give that name to any policeman, the defendant Sherman or any one else? A No, sir, not that I remember.

Q You say no or you don't remember? A Not that I remember.

Q Now, then, coming down to that evening of the 13th, that is the date, isn't it?

MR. CAFFEY: Yes, the 13th of April.

Q (Continuing) What time was it that you left the house on 26th street, the house of the woman whose name you do not remember? A It was late in the afternoon.

Q How late in the afternoon? A Between five and six.

Q What time was it, that you met Sherman, the defendant?

A It was near 10 o'clock.

Q So there were about five hours time elapsed between the

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time that you left the house and the time that you met the defendant? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now I want you to tell his Honor and the jury what you did and where you went during those five hours? A I was only just walking.

Q Walking for five hours? A Yes, sir.

Q Do you know where you walked. Did you stop in any place. Did you get any refreshments? A No.

Q Did you get anything to eat or drink at all? A No.

Q Why didn't you go home? A I don't know.

Q You had money in your pocket, didn't you? A Yes.

Q You knew that the tube would take you to Newark, didn't you? A No.

Q You didn't know that? A No.

Q Didn't you come from Newark in the tube? A Yes.

Q Then you knew the tube would take you back again? A. I don't know.

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

Q Now when you met Sherman where were you and where was he? A I do not know where he was.

Q Was it in a store or on the street? A On the street.

Q Don't you know whereabouts? A On the sidewalk.

Q Whereabouts, what street? A Broadway.

Q How long had you been on Broadway that evening before you met the defendant? A Not very long.

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Q About? A I don't know.

Q Were you there an hour walking Broadway? A No.

Q Do I understand you during all those five hours you walked all the time? A I did.

Q Did you sit down anywhere to rest? A I did once.

Q Where? A I don't know, some park.

Q How long did you sit there? A Not very long.

Q An hour or half an hour or ten minutes? A Just a couple of minutes.

Q Will you please tell these gentlemen why, for what purpose, if any, you took a five hour walk. Give me some explanation, the best you can? A I don't know.

Q Were you afraid to go back to that woman's house again?
A No.

Q You had not quarreled with the woman? A No.

Q Now when you saw him on the sidewalk was he alone?
A Yes.

Q Did he approach you or did you approach him? A He came up to me.

Q You do remember what he said to you. Do you remember what he said to you? A Yes.

Q That you can remember? A Yes, sir.

Q You weren't dizzy then, were you? A I don't remember.

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

Q You weren't feeling sick at the stomach then, were you?
A No.

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Q Were you feeling sick at the stomach then? A I don't know.

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

Q Now you say you remember what he said to you, what was it that he said to you? A He asked me if he could walk with me.

Q What did you say? A I didn't reply anything, but I kept on walking.

Q Before I go on, I want to ask if you were dressed any differently then than when you met the defendant? A Yes sir.

Q About your hair or your hat. Did you have your hair done up? A I had it just like this.

Q Just as it is now? A Yes, sir.

Q You kept on walking, did he walk with you? A Yes, sir.

Q How far? A About a block.

Q Did you have a veil on? A No, not then.

Q When did you put on the veil? A When I went in the house in 26th street.

Q Whose house? A Mrs. Gries.

Q The woman whose name you can't remember? A Mrs. Gries.

Q Did you go out and buy the veil? A Yes, sir.

Q What is that? A Yes.

Q Did you want to conceal your appearance? A No.

Q So that you could not be recognized that you put on that veil? A No.

Q Now you kept on walking about a block then what was done.

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You talked together while walking, did you? A No. He started showing his Masonic emblem.

Q Hadn't you been crying just before that? A No.

Q Weren't your eyes somewhat swollen from crying? A No.

Q Do you remember going up to him and saying to him, "I see you are wearing a Masonic emblem. My father is a Mason, and I want you to help me?" A No.

Q Try and recollect. A No, sir, I remember that distinctly; I did not go up to him; I remember that distinctly.

Q Well, leave out the words "you went up to him". Do you remember saying to him, "I see that you are wearing a Masonic emblem." My father is a Mason, and I am in trouble and I want you to help me." A No.

Q You say you did not or you don't remember? A No, sir, I did not.

Q What is that? A I did not. My father is not a Mason.

Q You say that this man himself volunteered to you the statement that he was a Mason? A Yes.

Q Was there anything which led up to it, that induced him to tell you that? A Yes; he said that he was a Mason, and that I should not be afraid of him, he said, "because all Masons are good men."

Q Wasn't that brought on by the statement that you said your father was a Mason, and you were in trouble? A No.

Q Did you speak about your father being a Mason? A No.

Q Your mother being connected with the ladies part of

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Masonry or anything of that sort? A No.

Q Nothing of that sort? A No.

BY THE COURT:

Q Where was your father born? A I think it was in Germany.

Q What part of Germany? A I don't know.

Q Where was your mother born? A I don't know if my mother was born here or not.

BY MR. LEVY:

Q Did you tell this man you were an orphan? A No.

Q Did you tell any one among all those people whom you met during this unfortunate period, did you tell any of them that you were an orphan? A No.

Q What is that? A No, but--

Q Well, but what? A Mr. Sherman told me to say that, that I was an orphan.

Q Did he ask you where your parents lived? A No.

Q Or where you lived? A No.

Q Did you tell him that you were a Jewess? A No.

Q Think now, did you tell Mrs. Gries that you were a Jewess? A No, sir; he told her.

Q Did you tell her that? A No, sir. Mr. Sherman told her I was.

Q Well, I am asking you whether you told her as well that you were a Jewess? A No.

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Q What do you say to that yes or no? A No, sir.

Q Did you tell the other woman in Stuyvesant Place that you were a Jewess? A No.

Q Did you have any talk with the woman in Stuyvesant Place at all? A She told me about her tooth; she complained about it.

Q Where did you get your breakfast the morning that you left the Stuyvesant street house? A In a restaurant.

Q Do you know where that restaurant is located? A Yes.

Q What is that? A Yes.

Q Where? A A place near Stuyvesant street.

Q Now after he said Masons are all good men what did you say to him? A I didn't say anything.

Q Did you keep on walking? A Yes.

Q How long did you keep on walking? A Not very long.

Q About how long, you know the time don't you, you can tell the time, can't you? A Yes.

Q You know the difference between a minute and an hour, don't you? A Yes.

Q How long did you keep on walking? A I don't remember.

Q Well, give me your best idea? A Well about a half an hour.

Q During that half an hour you kept on talking to each other, didn't you? A No.

Q You don't mean to say you walked together about conversing or talking to each other? A He talked to me.

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Q Didn't you make any answer? A No.

Q Was he asking you questions? A I don't remember.

Q What was he talking about? A Well, telling me all about that he was a Mason; showed me a ring and showed me a watch.

Q But it didn't take half an hour to tell you that, did it? A No.

Q What else did he talk about? A He didn't talk about anything.

Q Nothing? A No, sir; he said that he was going to take me to this lady's house, Mrs. Voss.

Q He told you he was going to take you where? A Mrs. Voss's.

Q Mentioned her name? A No, sir; not then.

Q Did he say to you whay he was going to take you to Mrs. Voss's house? A No, sir.

Q Did you ask him why he was going to take you there for? A No.

Q Weren't you curious to know why he wanted take you to that woman? A I don't know.

Q What is that? A I don't know.

Q Didn't you ask him what kind of a place it was where he was going to take you; and what he aas going to take you there for? A He said it was on Stuyvesant street; he told me.

Q Did he tell you what he was going to take you there for? A No.

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Q Didn't he tell you anything, or give you any reason for wanting to take you there? A No.

Q Did you tell him that you had a home? A No.

Q Did you tell him where you were living? A No.

Q Did he say anything to you about staying in that place or sleeping in that place over night? A Yes.

Q Did you tell him that you had a place to go to sleep?
A Yes.

Q What did you say about that, tell me what you said about it? A I don't just remember what I said about it. He said I shouldn't go there, I should come to this place on Stuyvesant street.

Q Didn't he say that you didn't want to go to Stuyvesant street? A I didn't say anything.

Q He merely was suggesting to you that he would take you to a room in Stuyvesant street, and you willingly went along, is that what you mean to say? A Yes.

Q While you were walking -- you say you met him about 10 o'clock-- did you stop in any place? A Yes.

Q Where did you stop? A In a drug store.

Q Do you know where that drug store was located? A No.

Q Did you get any refreshments in that drug store? A Yes

Q What did you get? A A hot chocolate.

Q Now did you have in your mind Viola,-- pay attention to this question-- did you have in your mind anything that would

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enlighten you as to what the purpose was for going to Stuyvesant street? A I do not know what you mean.

Q I will have to put it simply. What did you think you were going to Stuyvesant street for? A I don't know.

Q Was it for a good purpose or a bad purpose that you had in your mind that you were to go to Stuyvesant? A I had no bad purpose.

Q He didn't say anything bad to you, did he? A No.

Q He didn't use any bad language to you? A No.

Q He spoke kindly to you, didn't he? A Yes.

Q In all the time that you saw him did he say one word that was bad or wrong to you? A No.

Q Now after getting that chocolate you went down to see this woman at Stuyvesant street, but before doing so did he talk with you in the drug store about any matter or anything?
A No.

Q No. A No, sir.

Q Did he say to you that he was going to put you in good hands? A Yes.

Q Do you know what it was that you said to him that caused him to say to you, in that drug store, "I will put you in good hands"? A No. He said "tomorrow morning I am going to take you to another lady and see that you are put in good hands". I don't know why he said that.

Q Didn't he say to you, "I will get you a place to sleep tonight but tomorrow I will be able to take you to a good woman

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who will take care of you? A No.

Q Anything like it? A No.

Q Didn't you say something about it being late at night, and it would be hard to get some place to sleep? A No.

Q Didn't he say he didn't want you to go to a hotel? A No sir, he didn't say anything about a hotel.

Q Did you understand what he meant when he said that he was going to see that you were placed in good hands. What did you understand by that? A I don't know.

Q Now didn't you tell him that you had no one to take care of you? A No.

Q I will read to you from page 92 of the official minutes in the police court, and ask you if these questions were put to you, and did you make these answers. Please pay close attention to my reading. Were these questions put to you and did you answer them as I shall read to you. Do you understand that, do you, you understand what I am saying to you? A Yes.

Q You do understand. Now then all right. Listen."Can you remember any conversation had between yourself and this defendant while walking from the drug store where you had this chocolate? A. He said he would take care of me, and put me in good hands.

Q. He said he would take care of you, and put you in good hands? A. Yes.

Q. Had you said anything to him before that? A I don't

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remember anything. I said I didn't have any one. " I am reading to you now from the official minutes taken stenographically in that court. I ask you did you so testify-- that you didn't have any one, that you told him that you had no one? A No.

Q You didn't tell him that ? A No.

Q You didn't say this in the court? A No, sir; he told me to tell that lady where I was that I didn't have any one.

Q I am not talking of that. Here you were under oath before a Judge, and you were sworn to tell the truth. Now, before this Judge you swore, according to this official record, that you told this defendant that night when you were leaving the drug store that you didn't have any one? A I don't remember.

Q Did you tell that to the Judge in that court, did you swear to that? A I don't remember.

Q Is that the best answer that you can give me, that you don't remember? A Yes, sir.

Q Is your story now true or is the story you told up there true that you didn't have any one? A I am telling you all the truth.

Q Do you remember what was said when you got to Stuyvesant street by the defendant Sherman to the woman and by the woman to him, or by either one of the three of you? A Yes.

Q Now you tell me what was said? A Mr. Sherman rang the bell, the woman came to the door, and she said,-- called him by his name, and she said, "Helloe Bennie", and he said,

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"have you got my room", and she said, "Yes, I expected you earlier", and she asked him why he was late, and he said, he had been to the theatre. Then she let him in and she complained about her tooth and the neuralgia. She opened the room.

Q I want nothing but what was said. A That is all.

Q The language? A Yes, sir.

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

Q Sure now? A Yes.

Q You understood it all, didn't you? A Well, she said that half in English.

Q Well, English you understand? A Yes, sir.

Q German you understand? A I understand some German.

Q Some German? A Yes, sir.

Q Did you understand what she said that night? A Yes.

Q Sure about that? A Yes.

Q Now I again read to you from page 10 of the official minutes of what you swore to before the Magistrate: "Q. Did he say anything to the lady?" (No answer.)

Q. I am asking you whether you gave this answer in court under oath: "Did he say anything to the lady? A. He wanted a room. That is all.

Q. What did the lady say? A I don't know what she said. She didn't say it in English."

Did you swear to that? A Yes, I could not remember.

Q Was it true that you didn't know what she said? A I

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couldn't get all of their conversation.

Q You have given what purports to be the conversation now "How are you Bennie, why are you late", and all that sort of thing? A Yes, sir.

Q Did she speak in English? A That was half in English. Some words were in English, and some were not.

Q Now then we will pass from that. You were going into the room? A Yes, sir.

Q Was it a large room? A Yes, sir.

Q How was it furnished? A It had two drawers and a desk and a chair and a rocker.

Q One chair? A I don't remember how many.

Q Are you able to tell this jury according to your best recollection what time that was that you got to that house? A Between ten and eleven.

Q You told me it was ten o'clock when you met him on Broadway? A Yes.

Q How long after the time you went into the drug store was this? A What do you mean?
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Q How, after you left the drugstore and got the hot chocolate was it that you reached the house? A Just a couple of minutes.

Q A couple of minutes? A Yes, sir.

Q You don't mean that? A Yes, sir.

Q You must bear in mind it was on Broadway you had the chocolate? A Yes.

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Q Isn't that so? A Yes, sir.

Q Uotown on Broadway wasn't it? A I don't know.

Q You had to take a car to come down? A Yes, sir.

Q Isn't that so? A Yes.

Q How long did you ride on the car? A About fifteen minutes.

Q So it was quite a distance to come down when you took the car -- you got down and then you walked east, didn't you? A Yes, sir, three blocks.

Q So it was not a couple of minutes after you got the chocolate, it was quite some little time wasn't it at least a quarter of an hour? A Yes.

Q Now when you got up in the room, did he come up after you? A Yes.

Q Did you have a wrap or coat? A Yes, sir.

Q You took that off, didn't you? A Not as soon as I walked in.

Q I don't mean that minute but you did take your coat off? A Yes.

Q Did you say to the woman anything about not wanting to sleep there? A Yes.

Q Did you tell her anything about having a home to which you could go? A No, she didn't speak to me at all.

Q When you went into that room did you have it in your mind that you were going to sleep there that night? A Yes, sir.

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Q What is that? A Yes.

Q When did you make up your mind you were going to sleep there that night? A I don't know.

Q What is that? A I don't know.

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

Q Did you make up your mind when you met Sherman after you got the soda and while riding on the street cars-- when was it you made up your mind you were going to sleep in Stuyvesant? A I don't remember.

Q What is that? A I don't remember.

Q Did you think it was right for you to leave the other place, and sleep in this place? A I don't know if it was right.

Q Were you afraid? A Well, I was going to be there all alone I thought.

Q Were you afraid to sleep there at this Stuyvesant street house? A No, because--

Q Were you afraid to sleep there? A No, sir, because I thought I was going to be all alone.

Q You were not afraid to sleep there? A No, sir, not if I had been alone.

Q Well, once again I must ask you why didn't you go back to the house on 26th street where you had a room? A Because he told me he wanted me to go to this place on Stuyvesant street.

Q Were you in love with him? A No.

Q Did he fascinate you, do you know what that word means?

A Yes.

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Q Did he fascinate you? A No.

Q Did he give you any reason or argument why the Stuyvesant street house was a better place to sleep in than the 26th street place you were sleeping in? A No, sir.

Q How long after that was it that you undressed yourself?
A A couple of minutes after.

Q Before you undressed yourself did you turn out the light?
A Yes.

Q Who turned out the light? A Mr. Sherman.

Q Did you ask him to turn out the light? A Yes.

Q Did you ask him to leave the room? A I think he told he was going to go back to Brooklyn where he lived and then when the woman went out he said it was too late now to go back because he would have to be in his place of business by half past eight; he said he was going to stay there.

Q Did you protest against his staying there? A I did.

Q Object to it? A I did.

Q What? A I did.

Q What language did you use, tell me, what did you say?

A I said he couldn't stay there unless he would have another room.

Q Then what did he say? A He said he could not bother her to fix up a room.

Q What did you say? A Then I didn't say anything, then he said he would sit up in a chair.

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Q Was this conversation about his sleeping in a chair or sitting in a chair before the light was put out or after?

A Before the light was put out.

Q Did he undress himself? A I don't know.

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

Q Did you see him undress himself? A I could not.

Q You did not? A But he did.

Q When the light was turned out he was fully dressed?

A Yes, sir.

Q Did he wear an overcoat? A I don't know, if he did.

Q As a matter of fact do you know how he was dressed at all? A I don't know.

Q Do you know what kind of a hat he wore? A I think it was a derby hat.

Q What is that? A I think it was a derby hat.

Q Aren't you sure of that? A I think it was.

Q You don't know the color of it? A Black.

Q You can't remember whether he had an overcoat on? A I don't remember.

Q This was in April? A I don't know.

Q Then while you were in bed the lights were out, did he light the light again? A No.

Q Have you any idea as to how long a time it took you to fall asleep? A I don't know.

Q During the time that you were lying in the bed in the dark, didn't he speak to you at all? A No.

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Q Then did you speak to him? A No.

Q Are you able to say whether you fell asleep immediately or very soon, or a long time after you got into bed? A Quite awhile after I got into bed.

Q Quite awhile? A Yes, sir.

Q What do you call quite awhile? A I don't know.

Q Would you say an hour was quite awhile? A I don't know; it took me sometime to fall asleep.

Q While you were lying in bed in the dark this man seated, as you say, in a chair and you undressed in the bed were you afraid at all? A Well, I took his word that he was going to sit on the chair.

Q The question is were you afraid, yes or no. A Afraid of what?

Q Afraid of him? A I took his word.

Q Now you say that you were awakened during the night? A Yes, sir.

Q What was it that woke you up? A Mr. Sherman.

Q How did he wake you? Shake you or holler at you? A I don't remember.

Q Did he speak to you when you awoke? A I don't know.

Q You don't mean to say that you don't remember anything was said by him when he awoke you? A I don't think anything was said.

Q Nothing at all? A I don't remember.

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Q Now you told his Honor and the jury yesterday that this defendant-- you used the word-- had intercourse with you at that time. Now do you know what intercourse is? A Yes.

Q Who told you what intercourse was? A A lady by the name of Mrs. Wingate.

Q Where did Mrs. Wingate tell you what sexual intercourse meant? A She told me before I went before the Grand Jury.

Q Who is Mrs. Wingate? A A matron in the Society.

Q Did she tell you if the Grand jurors were to ask you what it meant that you should explain it to them? A Yes, sir.

Q Did she tell you in explanation that sexual intercourse meant a man putting his private parts into the private parts of a woman? A Yes, sir.

Q That is what she told you? A Yes, sir.

Q She told you when you got before the Grand Jury that you should say that that was what he did to you that night? A No, sir, she didn't tell me to say it because I knew he did it.

Q What did she tell you to say about it? A She asked me if I knew what it meant.

Q What else, go on. Tell me what she told you? A She told me what it meant.

MR. CAFFEY: When the witness started to answer I bent forward to catch her answer and Mr. Levy said, "Don't do that again" inferring that I was acting improperly, and then he tells the witness not to look at me as though

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she was looking for some suggestion or signal from me. Now, I resent that. The witness was not looking at me. I simply bent forward not to convey any impression to the witness but only to catch her answer. I think these little tricks as we go along ought to be stopped. We all know why it is done. It is for the benefit of the jury but it isn't fair to me.

MR. LEVY: There was an apparent signaling to the witness.

MR. CAFFREY: It isn't so, and I resent it. If this thing is going to go on I will be on my feet the rest of the day.

THE COURT: You will not without the Court's permission.

MR. CAFFREY: I am going to get on my feet every time he makes an insulting remark of that kind and I will ask the Court's protection from such insults. Now, I made no signals and never attempted to do such a thing. I simply bent forward to catch her answer.

THE COURT: I don't suppose you did anything like that or anything intentionally wrong. I don't think the District Attorney ought to be so sensitive.

MR. CAFFREY: I am not sensitive, but I don't think these remarks ought to be allowed to be made. I hope the jury will watch me from now to see if I give any signals.

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BY MR. LEVY:

Q Now Viola we were discussing Mrs. Wingate. Did she tell you, Mrs. Wingate, that very likely the Grand Jurors would ask you what you understood by sexual intercourse. Do you understand? A No, sir.

Q I will put it again in another way. Did she tell you why she explained what sexual intercourse meant? A Yes, sir.

Q Now what did she say was the reason that she explained what sexual intercourse means? A She said because the Grand Jury because the Grand Jury always asked what sexual intercourse meant so that I would know what they were talking about and what it meant.

Q Did she tell you something more? A No, sir.

Q Then what did she say to you sexual intercourse meant, what did she tell you? A She said that intercourse was when a man puts his private into a woman's private.

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

Q Stop and think now? A Yes, sir.

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

Q Take your time and think now. Tell us what she told you about your testimony, if you should be questioned about it before the Grand Jury? A She just told me to tell the truth about it, that is all.

Q What else? A I don't think she said anything more about it.

Q She said nothing more? A I don't think so; I am not

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sure.

Q Now you said here yesterday, Viola, that he did put his privates into yours. You remember that don't you? A Yes.

Q Do you remember what you said about that when you were a witness before the magistrate, in the police court testifying under oath. Did you say the same thing then? A I don't know.

Q You don't know? A No.

Q Is that the best answer that you can give me? A Yes.

Q Didn't you say in the police court, under oath, that he didn't have intercourse with you? A I didn't say it.

Q That you wouldn't let him? A No, I didn't say that.

Q Now let us see at page 12 of the minutes I am going to read you some questions and answers purporting to have been made by you under oath. Pay close attention if you please, and then I will ask you whether you swore to what I am going to read to you before the magistrate in the police court. You understand that? A Yes, sir.

Q You understand what I am saying to you now. Why do you hesitate? A I said yes.

Q Please now pay attention to these questions: "Did he do anything in bed? A. No, I didn't let him.

Q. You say you didn't let him do anything? A No, I didn't let him do anything to me.

Q. So he didn't do anything to you in bed? A. He touched me."

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Were those questions put to you and did you make the answers I just read before the Judge under oath? A Yes.

THE COURT: She said yes she testified to that.

Q Was it the truth? A Yes, sir.

BY THE COURT:

Q Having told the truth in the Magistrates' Court how do you reconcile that with what you testified to here when you say he did have something to do with you? A Well, they put the questions different then.

THE COURT: Will you find out who put the questions to her in the Magistrates' Court?

MR. LEVY: Yes, sir. I have the record here. The District Attorney's office was represented by the Assistant, Mr. Daniel Drenzo. This was before Judge William A. Sweetser on the 23rd of April, 1919, in the Fourth Magistrates' Court. The defendant was represented in that examination by Mr. Barnett Koppelman of 320 Broadway, and the record which I have here was taken by Frederick A. Baker, Official Stenographer of the court.

Q Now when you say that they put the questions to you differently what do you mean? A I didn't understand.

Q Now let me see, one of those questions was repeated twice-- they were in English, were they not? A I don't know.

Q Isn't that so? A What is that?

Q You don't mean to say that you don't understand English?

A I do.

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Q Now let me read it to you again, three times now. You said the same thing, "Did he do anything in bed? A. No, I didn't let him."

You understood that question, didn't you, put to you in plain English? A No.

Q Didn't you understand it? A No.

Q You understand it now? A Yes.

Q You mean to say you answered when the question was put to you "Did he do anything to you in bed? A. No, I didn't let him", you didn't understand that question? A I didn't understand it.

BY THE COURT:

Q What did you mean when you said you didn't let him, what did you mean? A I told they meant did he touch me with his hands.

BY MR. LEVY:

Q Now the next question was put to you? "You say that you didn't let him do anything? A. No. I didn't let him do anything to me." You added the words in the second answer "to me". Did you make that answer? "No, I didn't let him do anything to me." Is that true, was it true or wasn't it true? A Well, I didn't let him touch me with his hands, did I?

Q You understood the question, didn't you, as to whether he did anything to you, and you said no, you wouldn't let him? A I didn't understand^{it} thoroughly.

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Q Well the question was put to you two or three times and you answered the same way, didn't you, that you wouldn't let him touch you, that you wouldn't let him do anything to you?

A I didn't understand it.

Q Now these other questions. You say he touched you, is that right? A. Yes. You understood that, didn't you? A I didn't understand you.

Q You did not. I will read it again.

Q Was this question put to you and this answer made by you "You say he touched you, is that right? A Yes.

Q. On what part of the body did he touch you? A. He wanted to kiss me.

Q. What else, anything else. Tell the stenographer if you don't want to tell me? A. He wanted to touch the private part of my body.

Q. Did he? A. Yes.

Q. With his hand only? A. Yes.

Q. Is that all he did? A. Yes."

A No, sir.

Q Now did you understand those questions? A I was afraid to say it.

(At this point the witness begins to cry.)

(After a lapse of several minutes.)

THE COURT: Are you sufficiently composed to go on.

(No answer.)

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MR. LEVY: If it will help the young woman to compose herself I would be glad if we had an adjournment now.

THE COURT: Are you sufficiently composed to go on.

THE WITNESS: I do not want to go on.

(At this point the Court takes a recess for fifteen minutes.)

(At 12.30 the Court takes a recess until 2 o'clock.)

AFTER RECESS. (2 p.m.)

SELMA VOSS, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CAFFEY:

Q Where do you live? A 26 Stuyvesant Place.

Q New York County? A Yes, sir.

Q Now did you conduct a rooming place at 27 Stuyvesant street, in the County of New York on April 13th, 1919? A Yes.

Q Do you speak English perfectly? A No, sir, I wish to talk German.

Q Are you still keeping a furnished room house? A Yes, sir, I am the housekeeper.

Q Still conducting it? A yes, sir.

Q Now do you know the defendant that the bar, Benjamin Sherman? A Yes, sir.

Q How long have you known him? A Three years.

Q Do you remember the night of the 13th of April, 1919?

A Yes, sir.

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Q Did you see the defendant at your house that night?

A Yes, sir.

Q Sherman, at your house that night? A Yes, sir.

Q About what hour? A About 11 o'clock or half past 11.

Q Now, did the defendant come in the house? A Yes, sir.

Q Tell the jury how he came in. A He rang the bell, I go upstairs, I open the door, and Mr. Sherman came in and said, "Mrs. Voss, you go a room for me", and I let him right into the parlor.

Q He rang the bell? A Yes, sir.

Q Where were you downstairs in the basement.

Q You came up? A Yes, sir.

Q One flight of stairs? A Yes, sir.

Q How many rooms on that floor, the first floor? A There is in the front part of it, only the front and then the back.

Q Parlors? A Yes, sir-- a small room and then the back parlor.

Q A small room or two small rooms? A Then the back parlor, a small room in the front where the boss lived.

Q How many rooms have you there? A Two rooms the back parlor and a small room where the boss lived.

Q Who is the boss, your husband? A No, sir.

Q The boss of the house? A Yes, sir; he lived in the house, a friend of my husband.

Q Then is there anything between those two rooms, the

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back and the front is there a hall there? A Yes, sir, a small hall, between the back parlor there is a small hall and the front room.

Q How about a door? A Two doors, right here, this is the back parlor and here is the front room.

Q What is between them, a small hall? A A small hall.

Q Now, when you went upstairs you opened the door? A Yes, sir.

Q Who was at the door? A Mr. Sherman, and a lady.

Q Who was the other person? A A lady was there.

Q A lady? A Yes, sir.

Q Now tell us exactly what was said by the defendant, what Bennie said? A Bennie told me, Mrs. Voss, you have a room for me, and I told him I got the back parlor empty, that is what I told him.

Q Did you say that to him? A Yes, I got the back parlor empty.

Q Now then what did you do after you told him that? A I opened the door and Mr. Bennie goes in.

Q You opened the door? A Yes, sir.

Q The back parlor door? A Yes, sir.

Q With a key? A yes, sir, with a key.

Q And Bennie and this woman went into the room? A Yes.

Q Now was there a light in the hall? A No, sir, the hall was dark; I couldn't see the lady in the face.

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Q And after you got into the back parlor what was done there, what was said in the back parlor? A He gave me two dollars on the room and I go downstairs.

Q Who gave you the two dollars? A Mr. Bennie.

Q What did Mr. Bennie say when he gave you the two dollars? A He gave me two dollars deposit on the room, and I go downstairs.

Q Did he say anything when he handed you the two dollars? A He gave me it in the hand.

Q He gave it to you in the hand? A Yes, sir.

Q What did he say when he handed you the two? A I was excited and I went downstairs.

Q Now when you got in the room, did you light the gas? A Mr. Bennie makes the gas and I go downstairs.

Q Did you say anything to Mr. Bennie about your husband? A No, sir, Mr. Bennie gave me a cigar for Mr. Voss, won't you take a cigar for your husband.

Q He gave you then a cigar for your husband? A Yes, sir.

Q Was he sick that day? A We had rheumatism.

Q Did you tell that to Bennie? A Yes, sir.

Q He handed you a cigar for your husband? A Yes, sir.

Q At the time you spoke to these two people were you sick? A I was very sick, I got on this same night the doctor.

Q What was the matter? A I got neuralgia.

Q Did you have any bandage around your head? A Yes, sir,

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I had a bandage on my head.

Q Now when you left the room and went downstairs, this back room, was Bennie and this woman-- was Bennie and this woman, whoever she was in the room-- that he came in with-- in this room when you left to go downstairs, were they in the back parlor? A Back in the back parlor.

Q Did you close the door? A Yes, sir, and I go downstairs.

Q You closed the back parlor door? A Yes, sir.

Q Went downstairs? A Yes, sir.

Q Now do you remember seeing the defendant the next morning, Mrs. Voss, do you remember seeing Bennie the next morning?

A Yes, sir.

Q Where were you when you saw him? A In my front room.

Q In this room called the boss's room? A Yes, sir.

Q Is that where you were? A Yes, sir.

Q Now was the door to that room opened or closed? A My door is every time closed.

Q On that morning? A No, sir.

Q Was that door while you were sitting there on that morning, was the door leading into the hallway from your little room open or closed? A My room was open.

Q From where you sat in that little room could you see the door leading from the hall into the back parlor. Do you understand that question. From where you sat in your room

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with your door open could you see the door leading from the back door to the parlor? A It was closed.

Q Could you see it, that door? A Yes, sure I could see it.

Q Now then, did you see anybody come out of the front room? A No, sir, why only this morning Mr. Bennie came out.

Q What time was that? A Between eight and half past eight o'clock.

Q Now, when Bennie came out did you have a talk with him? A Mr. Bennie looked on the watch and told me "It is late, I must go in my business.

Q Did he say that to you? A Yes, sir.

Q Now after that did you see anybody else come out of that room? A Nobody I didn't see; nobody didn't come out, but after came the lady out.

Q How long after Bennie came out of that room did the lady come out? A The lady comes out at nine or half past ten-- nine or half past nine.

Q You are getting along now. Tell us how long after Bennie went away was it that this lady came out? A Between nine and half past nine she came out.

Q Is this the girl that came out of that room? A Yes, sir (identifying the complaining witness).

Q Did you have a talk with her? A Yes, sir. She asked me--

Q She asked you something? A Yes, sir.

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CROSS EXAMINATION BY MR. LEVY:

Q Now Mrs. Voss, you know Bennie how long? A Three years.

Q He is a friend of -- A To my husband.

Q You are a married woman? A Yes, sir, I am married.

Q How long have you been married? A In November, the 13th of November, twenty five years.

Q Twenty five years? A Yes, sir.

Q How many children have you got? A The children is dead I got no children.

Q In that house where you lived in Stuyvesant street, were there any children there in the house? A In my house no children.

Q It is a private house, isn't it? A A furnished room house.

Q How big is it, three stories or two stories? A Four flights up.

Q You have the whole house? A Yes, sir, I am the housekeeper.

Q Who is the proprietor, who is the owner of the building?
A The boss is Mr. Brick, August Brock.

Q He engages you as housekeeper? A I am the housekeeper.

Q How long were you housekeeper? A Three years for three years.

Q Now your husband and Bennie were good personal friends?

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A Yes, sir.

Q You keep a respectable house? A Yes, sir.

MR. CAFFREY: I object to that.

THE COURT: I will allow it.

Q You are careful to see that everything is all right?

A I got only gentlemen in my house.

Q Now that night you were sick with neuralgia? A Yes, sir.

Q Is that right? A Yes, sir.

Q Do you know a man by the name of Levindick? A Yes, sir.

Q Who is Mr. Levendick? A He is a friend of my husband's too.

Q A friend of whom? A A friend from Mr. Voss.

Q Mr. Levendick owns the house, does he, or did he run it for Mr. Brock? A Yes, sir.

Q He gave a lease to Mr. Brock of the house? A Yes, sir.

Q And Mr. Brock engaged you as housekeeper? A Yes, sir.

Q Now, when you say they are friends they meet many times they play cards together? A Yes, sir.

Q He visits your house? A Yes, sir.

Q They visit each other like friends? A Yes, sir.

Q Mr. Levendick who runs the place or leases it to Mr. Brock also is in the same circle? (No answer.)

Q Now you say you only let these rooms to men? A Yes, sir.

Q Now when Bennie came there that night with a young woman or with a woman you did not see her face? (No answer.)

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Q Did he make an explanation to you of why he brought the woman? A No, sir.

Q What did you think?

Objected to; objection sustained.

Q What did you think was the purpose of that woman being there?

MR. CAFFREY: I object to that. That is for the jury to determine.

THE COURT: Excluded.

Q Was there anything said about this girl that you should take care of her or look after her? A Nothing.

Q Now you went up to light the light in the parlor, is that right? A Yes, sir; they made a light.

MR. LEVY: I would sooner have the interpreter.

(The balance of the testimony of this witness was taken through an official interpreter, Mr. Fisher.)

Q Who lit the light? A Mr. Bennie.

Q When he came there with the young woman did you get a chance to see her face, who ever it was? A No, sir; I went downstairs immediately.

Q Now, if you only let these rooms to men how did it come about that you let a woman come in there? A Why Mr. Bennie is a friend of my man, and that is the reason I rented it; I wouldn't have rented it to anybody else even at night.

Q Did he say anything about his remaining in the house or whether he was going to go away, and whether he was going to

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come back again or anything like that? A No, sir; he didn't say anything.

Q Now during the night after you went in there and the li was lit did you hear any person leave the house? A There are people in the house that go in and out and therefore I can't tell whether anybody went out.

Q Did you hear a slamming of the door at all? A Yes, sir, it seems to me as if a door had been closed down in the basement because we live in the basement.

Q How long after Bennie came into the place did it seem to you you heard a door closed? A That I can't say; I was so sick.

Q About how long? A That I can't say, I don't know.

Q About half an hour? A I can't say.

Q Was it very long after or not? A I can't say; I don't know.

Q Now the entrance to that door, how is it located, does a person require a key to get in? A The front door naturally.

Q Well, who opens the door when the bell rings besides yourself? A I open the door.

Q If you do not who does? A If I don't hear the boss opens the door.

Q When you speak of the boss whom do you refer to? A The landlord, Mr. Brock.

Q Where does Mr. Brock live, what room did he occupy?

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A In the front room.

Q In the front of the room that this young woman was taken to? A Yes, sir.

Q Do you know whether or not the bell was rung and any person was admitted into that house around 8 o'clock the following morning? A No, sir.

Q What does she say no, or she doesn't know? A The people go to work and it is possible that somebody did come in.

Q About how many tenants as a general thing occupy that house? A I have thirteen rooms to rent.

Q In the morning what time was it that you saw this defendant? A Between eight and half past eight.

Q Where was it that you saw him? A I was in the front room.

Q Where did you see him? A He came to the door of the front room and he stood there.

Q Did you see where he came from? A From the back parlor.

Q What did he say to you and what did you say to him? A He looked at his watch and he said, "It is late, I must go to work."

Q Did he say anything to you about taking care of that girl? A Nothing at all. I went back immediately.

Q How long after that was it that you saw this young woman whom you have just identified? A Between nine and half past nine the girl came out.

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Q What was it she said to you and you said to her? A She came out and asked me where she could go and get breakfast.

Q You told her? A Yes, sir, I told her to go around the corner.

Q Did she return again? A No, sir.

Q Did she make any complaint to you? A Nothing at all.

Q Did you hear any noise or any unusual sound coming from that room during the night? A Nothing at all. Everything quiet.

BY THE COURT:

Q Did you go into the room in which the girl slept the following morning? A No, sir; after they went away the following morning I cleaned up the room.

Q Did you notice the bed sheets? A Nothing, everything very clean.

Q Did you see any blood or anything of that sort in the bed? A No, sir, no blood nothing at all.

BY MR. LEVY:

Q And the coverings on the bed were in perfect order?
A Everything was in order.

Q In order? A Yes, sir.

Q Did you hear any door slam, the front door slam at about half past seven in the morning or any footsteps approaching the back room? A I told you there were people going in and out, and the door was closed all the time.

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Q Well one more question. You say the bed and its coverings were in perfect order each morning when you went in?

A Yes, sir, in good condition everything clean.

RE DIRECT EXAMINATION BY MR. CAFFREY:

Q You say that the bed was in good order the next morning. You don't mean that the bed was not used, do you? A I mean the bed was used, but it was clean.

Q The bed was mussed up? A Yes, sir; somebody had slept in it.

Q People to get into your house would have to go and ring the bell, wouldn't they? A Yes, sir.

Q You say the people who came in and out were tenants of your house? A Yes, sir.

Q They must have had keys? A Yes, sir.

Q Now in the morning around half past seven or any other hour in the early morning before you saw this defendant, did you hear the bell, the front door bell ring? A No, sir, nobody.

Q What is that? A No one.

Q You are sure nobody rang the bell? A No, sir, nobody.

Q Did Mr. Brock the lessee occupy that front room on the night in question? A Mr. Brock, my landlord, lives in the front room.

Q Was he in that room, does he sleep in that room that night that you let these two in? A Yes, sir.

Q Do you know what time he left the next morning? A Yes

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sir, he goes to work at half past six in the morning.

BY MR. LEVY:

Q In what language did the defendant speak to you, and in what language did you speak to him? A German.

Q Now did you speak English to him at all? A No, sir, not a word, only German.

Q Did he say to you that he only wanted the room for a little while? A No, sir, nothing at all.

BY MR. CAFFREY:

Q Did he say to you here is a cigar for your husband?

A Yes, sir.

Q You told him that your husband was sick? A Yes, sir.

Q Then he pulled out a cigar? A Yes, sir.

Q He did give you a two dollar note? A Yes, sir.

THE SECOND JUROR: May I ask Mrs. Voss what was the two dollars for, one night or for one week?

A It was a deposit for that room, the room is five dollars and he gave me a deposit of two dollars.

Q Did he give you the rest of the three dollars balance?

A No, sir, I was not afraid, I thought he would come back and pay it.

BY MR. LEVY:

Q The juror wants to know what this deposit was for. You said a deposit, does that mean for the use of the room that night or for the week or for the month? A The first payment

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for the room.

Q You mean payment on account or payment for the night?

MR. CAFFREY: I object to that. I ask that the witness be confined to stating what the defendant said to her when he handed her the money and not be allowed to speculate as to what she thought it was for.

THE COURT: It isn't what she thought it was for, but what the second juror has in mind is the significant fact that will ultimately become very important in this case-- was there anything said about taking that room for a week or for a night, whichever it was. I am going to let the question stand as I think the juror is entitled to know the fact.

MR. CAFFREY: I don't object to the question, but I think she ought to be permitted to tell us what was said about it.

BY MR. LEVY:

Q The juror desires to know whether there was anything said when the two dollars was paid what the payment was for, whether it was for the night or whether it was on account for a longer time or whether it was for a little while or whether it was for the engagement of the room for any certain period of time.

MR. CAFFREY: I understand that the juror wants to know what was said about that.

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THE JUROR: What was said about that, yes.

THE WITNESS: The two dollars was paid to me on account; I don't rent any rooms by the hour, day or night, I only rent rooms by the week.

MR. CAFFREY: I move to strike out the answer as not responsive. She was asked plainly what Bennie said, and she is not telling that, if it please the Court.

THE COURT: I want to know whether this man hired that room for one week or for twenty minutes. That has an important bearing on this case. If true it would go largely to sustain the contention of the learned gentleman for the defendant when he opened his case to the jury. Now, I am going to know the facts. I will not exclude anything on this important branch of the case.

MR. CAFFREY: I am not asking to exclude anything, but I would like to get what the defendant said.

THE COURT: Tell us what the defendant said.

THE WITNESS: He gave me two dollars and said nothing.

BY MR. LEVY:

Q Now, Mrs. Voss, he was a friend of your husband's. When he paid you those two dollars did you understand that the payment was on account of a week's engagement of that room?

MR. CAFFREY: I object to that on the ground that it is irrelevant, incompetent and immaterial, what she understood.

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THE COURT: I will allow it because her understanding may have been based upon something which was said or done.

MR. CAFFREY: May we know what was said, and upon what she based that understanding. She says that he said nothing but handed her the two dollar note.

THE COURT: Tell us what you understood the two dollars to be for, Madam.

THE WITNESS: I thought he would bring me the balance of the money.

THE COURT: For the rest of the week?

THE WITNESS: Yes, sir, for the week.

BY MR. LEVY:

Q Now then, one other question, Mrs. Voss, did you say to him when he rang the bell and you met him at the door that night "Bennie, your room is ready why are you late, you come late for your room" or something to that effect? A God forbid; I didn't say anything.

THE COURT: That is what the girl said.

Q Now you say you did not say it? A No, sir, I said "Good evening Bennie, and that was all.

Q You did not say the other thing? A No, sir.

BY MR. CAFFREY:

Q Now just a moment. Did Bennie ever come back to your house after the night he paid you the two dollars? A No, sir.

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Q Did he ever pay you any more money besides the two dollars? A No, sir.

Q Did Bennie ever have a room with you before that? A Long before that he had the front room for himself.

Q How long before that? A It was the first year before I came there.

Q How long before is that, the first year you came there? A About two years.

Q How long did Bennie occupy that room? A Fourteen days.

Q Did he bring any woman to the room? A Nobody.

Q Never brought a woman up there? A No, sir.

Q Didn't live there fourteen days with the woman? A No.

WILLIAM TRAVIS GIBB, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he resides at 42 West 75th street)

DIRECT EXAMINATION BY MR. CAFFREY:

Q Dr. Gibb, you are a physician and surgeon duly licensed to practice in the State of New York? A yes, sir.

Q How long have you been engaged in that practise, Doctor? A Thirty three years.

Q You are the examining physician for the New York Society for the Prevention of Cruelty to Children? A es, sir.

Q You have been engaged in that capacity how long? A 28 years.

Q Now on the 21st day of April, 1919, did you make a phy-

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sical examination of the person of Viola Muller, the complainant in this case? A Yes, sir.

Q Stand up. '(Referring to Viola Muller) That is the girl over there.

Q Indicating Vila Muller? A Yes, sir.

Q Will you tell us the result of your examination? A I examined her in the Psychopathic Ward of Bellevue Hospital on the 21st day of April.

Q The 21st? A yes, sir, at half past nine in the morning.

Q Will you tell us what your examination disclosed? A I examined her private parts, and I found that the Hymen was ruptured indicating complete penetration of her genital organs by some blunt object.

Q Could you say from such an examination how recently that rupture was made? A No, sir, the part seemed entirely healed; I couldn't say; the child was exceedingly nervous and it was difficult to examine her, but the parts seemed to be perfectly healed so that it is impossible to say how recent the original rupture was.

BY THE COURT:

Q Doctor you made the examination in the psychopathic Ward? A Yes, sir.

Q In Bellecue? A Yes, sir.

Q Where people are confined who are under observation to determine whether they are suffering from any mental disease?

A Yes, sir.

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Q At that time did it appear to you that she was normal or what she mentally abnormal? A She would not talk; she would not say anything to me. I was only sent there to examine her sexual organs, and I did not examine her mentally except that she would not answer any questions; she wouldn't say anything to me at all.

CROSS EXAMINATION BY MR. LEVY:

Q Did you get any impression with regard to her mentality at all? A The impression that I got -- I thought she was feigning; she was putting on.

Q Pretending? A Yes, sir.

Q An injury? A Yes, sir.

BY THE COURT:

Q Was it your opinion from your examination of her at the time that she was malingering, to make it appear that she was of unsound mind? A That seemed so to me. I remained with her a matter of fifteen minutes, and did not go into that very carefully. I simply made a note on my slip that it was my opinion that she was malingering, pretending.

Q As to her degree of mentality you had no opportunity of forming an opinion? A No, sir.
BY MR. LEVY:

Q But the impression that you got was that she was pretending, she was faking, to use a slang word? A Yes, sir.

Q Malingering? A Yes, sir.

Q Now one other thing about this, how soon after a rup-

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Q How soon after a rupture, as a general thing of the hymen of a female ought the parts to heal? A From three to ten days usually.

Q There no longer any evidence of any rupture there?

A No, sir.

Q It might have been a very old rupture? A It might have been any kind at all.

Q Might have been months before? A Yes, sir.

Q So there wasn't anything found there that would furnish us with any illumination as to when that rupture took place?

A No, sir; I couldn't tell about when it took place.

Q Doctor, the last time I examined you I asked you about how many females you had examined, whose privates you had examined, and you told me about twenty thousand. Has that increased in number since? A Well, perhaps, it has doubled up since then.

Q About how many would you say now? A I would say fifty thousand.

MR. CAFFREY: Your Honor I am awaiting your instruction as to whether I shall recall the complainant now.

THE COURT: Have you any other witnesses?

MR. CAFFREY: Yes, sir.

THE COURT: I am going to give the complainant all the time she needs to compose herself. I want to give her complete time for composure.

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WILLIAM J. HAUPTMAN, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he is a police officer attached to the 36th Precinct, Detective Division.)

DIRECT EXAMINATION BY MR. CAFFREY:

Q You are a police officer attached to the Police Force of the City of New York? A Yes, sir.

Q Were you such in April, 1919? A Yes, sir.

Q You are also a member of the Detective Bureau? A Yes.

Q Now, Officer, on a date in April, 1919, did you meet the complaining witness in this case, Viola Muller? A I did.

Q What date was that? A Friday, April 18th.

Q Did you have a conversation with her? A I did.

Q Now in consequence of that conversation, did you go any place with her? A No, sir, I did not. My partner Detective Mullahey went.

Q Were you with him? A I was with Mullahey when I met the complainant.

Q Then did Mullahey go somewhere with the complaining witness? A No, sir. I remained at the place with the complaining witness, 113 East 26th street.

Q Now, where did you meet the complaining witness? A At 113 East 26th street.

Q New York County? A Yes, sir.

Q Do you know who the landlady of that house was? A I

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do.

Q What was her name? A Betty Gries.

Q Now did you go to Viola Muller's room? A I did.

Q I show you people's Exhibit 3 for identification, and ask you whether or not you ever saw that before? A That was lying on a dresser or cheffonier in room 5 on the third floor of this furnished room house.

Q Whose room was that? A That was Viola Muller's room.

Q I ask you to look at People's Exhibit 1, and state whether you ever saw that before? A That was there too.

Q In Viola's room? A Yes, sir.

(People's Exhibit 3 for identification is marked People's Exhibit 3 in evidence.)

Q Now, Doctor, you remained in that place with the girl, Viola Muller and did Officer Mullahey go away? A Officer Mullahey went away.

Q With whom? A With Siegel, a man by the name of Siegel

Q What is his first name? A Nathan.

Q Before you went into this house at 113 East 26th street did you have a conversation with this Nathan Siegel? A Myer Siegel .

Q Did you have a conversation with this Myer Siegel?

A Yes, sir, I did.

Q Then you and Mullahey went into the house? A Yes, sir.

Q Is that it? A yes, sir, and Siegel.

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Q You remained in the house with Siegel while Mullahey went away? A Mullahey went away with him, with Siegel.

Q You and the girl remained there? A Yes, sir.

Q Now after that did anybody come to the house? A Detective Mullahey and Myer Siegel and the defendant Sherman.

Q What time did they reach the house where you were?

A That was about I should judge about one o'clock p.m.

Q Did you have a conversation with the defendant or did Muller in your presence have a conversation with the defendant Sherman? A Well, we asked him, --

Q Did you have a conversation with him? A Yes, sir.

Q Who was at the conversation? A Mullahey, myself, Sherman and the girl.

Q All took part in it? A Yes, sir.

Q Now, Officer, I want you to give that conversation. State exactly what each person said, and the answers that were made, so that when you say something was said, and what somebody else said, state who said it, and what the reply was so that we will get it exactly. A The defendant Sherman was brought there by Detective Mullahey, and we asked him about the girl.

Q Will you as far as you can recall state who asked him and as nearly as you can recollect the language that you used to him in the question. A Detective Mullahey asked the defendant, Sherman, did he bring the girl to that house. He said

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yes, he had met her on Broadway Sunday night about 10 p. m. between 36th and 37th streets, and she said that her father was a Mason.

Q Now that is what she said to him? A Yes, sir.

Q Go ahead. A That she was going to 42nd street to meet at Childs Restaurant, that the name of the friend was unknown that he walked her then down Broadway to 23rd street and he left her there. She walked west. So I said "Well, did you bring her to this house, " and he said yes. I asked Sherman, I said, "Did you bring this girl to this house", and he said "Yes, I brought her here Monday morning." That was on the 14th. I said "Why did you bring her". He said, "I felt sorry for the girl". I said, "Well, you didn't know the girl", he said "No, but she told me her father was a Mason." I asked the girl her name, and of course, her mind seemed to be a blank, in a daze. I did not know her name at first when I questioned her, and I asked her name, and she said her name was Viola Matton. May I look at a memorandum?

MR. LEVY: No objection.

THE WITNESS: Viola stated that she met a man whom she doesn't know, of whom she could give no description, who brought her to New York on the train.

MR. CAFFEY: Does your Honor want to hear all that?

THE COURT: Yes.

THE WITNESS: He gave her twenty five dollars and left

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her at a place unknown. She stated she bought a newspaper and looked for a furnished room which she found on 23rd street near 9th avenue, number unknown, and the name of the person unknown, where she remained until April 9th. She appeared to be under the influence of a drug and suffering from loss of memory.

Q Now, what did the defendant say to you. Resume from there? A Well, the defendant says "I just brought her in this room." I said to him, "Well, she is no relation of yours". He said "No, but I felt sorry for the girl". So then we brought him over to the 21st Precinct station house where we made an identification of the girl as being Viola muller. She denied that she was Viola muller at first.

Q Now the defendant said to you that he left the girl on Sunday night on the corner of 23rd street and where did you say? A 23rd street and Broadway.

Q And that he had brought her to this house in 113 East 26th street, the next day? A Yes, sir.

Q Monday morning? A That was on Monday.

Q That was Monday morning?

MR. LEVY: Brought her to what house?

THE WITNESS: 113 East 26th street on Monday morning.

BY MR. CAFFREY:

Q Did the defendant say where he met this girl on Monday morning? A At his place of business.

Q Did he say anything about having spent the night with

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her, Sunday night? A No, sir, he did not.

Q He said nothing about that? A No, sir.

Q Did the defendant tell you he had taken the girl to No. 27 Stuyvesant Place or Stuyvesant street? A No, sir.

Q He did not? A No, sir.

Q He didn't say anything to you about it? A No, sir.

Q Have you told everything about this case? A That is all I know about it.

CROSS EXAMINATION BY MR. LEVY:

Q Now, Officer, I shall be very brief with you. How did you ascertain the whereabouts of this girl. Make that clear to the Court and jury. Perhaps I better withdraw the question and ask you this: Hadn't a notice been sent out through police channels that a girl by the name of Viola Muller had been missing from Newark? A Yes, sir, the Police department of the City of Newark.

Q Communicated to the department here saying that a young girl named Viola Muller was missing from home? A Well, it wasn't just an alarm; it was on the sheet.

Q The newspapers were printing different accounts and descriptions of this girl, is that right? A Yes, sir.

Q Then you in the performance of your police duty had that in your mind as well as any other matters relating to missing persons? A yes, sir, I did.

Q The question I wanted to ask you before was how did you

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come to locate this girl and her whereabouts. Make it clear to his Honor and the jury. A I was on duty, Friday morning, that is on April 18th about 9.15 or 9.30 and the private telephone rang in the office, and a man that I had known for about six years called me up.

Q The name of the man please. A Myer Siegel.

Q The same Siegel you have been talking about? A Yes.

Q A friend of this defendant's? A I don't know if he is a friend.

Q Call him an acquaintance? A We called me up, and he said, "Say Bill, I think I know where that missing girl is, that is in the newspapers". I said, "What do you mean you think." I said, "Do you know. Well", he says, "her picture is in the papers, and it looks like her." So I got interested in it, and I said, "Well, where are you now". He says, "I am downtown on Hester street. Down about the place that I used to work, when in uniform." I said, "Well, where is she". He said "Up in a place in 26th street. I can't tell you the number because I don't know. ". So I said, "Can you meet me in twenty minutes or thirty minutes", and he said "I will meet you in three-quarters of an hour", and I said, "where". He said, "Meet me at 28th street subway station and Fourth avenue." I then got Detective Mullahey and we went down there and we met Myer Siegel, and I said, "Meyer, you go up", I says, "and you point out the house."

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Q Did you ask him how he knew? A Yes, sir.

Q What did he tell you? A He said that he brought her home.

Q What is that? A Brought her home the night previous.

Q He had been out with her? A He went as far as the Strand Theatre with her, and she got a headache and came back about 10 o'clock at night, and he left her there and he says, "I am positive it is her because"he says"the picture is exactly the same". "The hat she is wearing is the same as the picture."

Q Did he tell you he knew Sherman? A Yes, sir.

Q That is what I want to develop? A He said a friend of mine met her on Broadway, and so he says he got a room for her there.

Q What is that? A He got a room for her there, and she looks like the girl from Newark.

Q Is that what Sherman said? (No answer.)

Q Now, did he say that Sherman said that? A Well, I do not understand your question.

Q I will put that plainly. Did he say that Sherman says he looks like the girl from Newark? A No, sir, Sherman didn't say that, he said that.

Q I want to develop the fact whether the information Siegel was communicating to you was what Sherman said as to the identity of this girl? A That I do not know.

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Q What did he tell you about Sherman. Let us have the whole truth. A He said a friend of mine had her, it was him put her in this house in 26th street.

Q What do you mean by that? A Got her a room.

MR. CAFFEY: I object to that. He said he is using now the language that Siegel gave him. Mr. Levy wants the witness's construction of the language used by another and I object to it. I ask that the language that Siegel used stand, that is, that he put her in a house, got her a room.

MR. LEVY: Did he use that word?

THE WITNESS: I don't know whether he did or not.

THE COURT: Use names. Don't use personal pronouns that might apply to anybody. Use names.

THE WITNESS: Myer Siegel said that Benjamin Sherman said that he got her a room in 26th street.

BY MR. LEVY:

Q That's different. A Yes, sir.

Q Now what else? A He said, "I am pretty sure it is the girl". We proceeded to the place on 26th street, on the first floor of a three story and basement house used for furnished rooms and private families. We went to the first floor and rang the bell. Nathan Gries came out, the proprietor's son. I then asked for Viola Mayton, the name that Myer Siegel had given me. He brought me into the front room, the parlor, and

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Viola Mullerm then under the name of Mayton, was sitting at the piano in a kimono.

Q In a kimono? A Yew, sir. I said, "How do you do." She looked at me. So I says, "Is your name Viola Mayton". She says "Yes." I questioned her for awhile and she denied that she was Viola Muller.

Q She did what? A Denied, her mind was in a daze. I then asked whether she was -- I showed her the picture in the paper, and she looked at it in the paper, and I was looking at it, and so she looked over my shoulder, and I said, "Isn't that a good picture of you", she says, "I don't know." I said, "Is that your name", she said "not that I know of; she said the man told me I was an ohphan."

Q A man told her that she was an orphan? A Yes, sir. I said, "What man", and she said, "I don't know his name." Then I went to her home, Detective Mullahey had left and went to Sherman's place of business.

Q Now you found these papers in the room? A No, sir, not these papers.

Q Did you ask her whether she knew where she lived?
A Yes, sir.

Q What did she say? A She didn't know.

Q Asked her whether any wrong had been done to her?
A Yes, sir, she said no.

Q Did you ask her whether she knew Sherman? A No men-

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tion of the name of Sherman.

Q Did she say Sherman had done any wrong to her? A She said nobody did any wrong to her.

Q This house in which you were on 26th street it is a respectable place as far as you know? A Well, as far as I know. The first time I was ever in the place.

Q A family there by the name of Gries? A Yes, sir.

Q You saw the wife? A Yes, sir.

Q And some children? A Two of the children.

Q I show you a photograph, and ask you whether this is the photograph of the woman you saw there as Mrs. Gries? A Four of them I recognized, the man, wife, son and daughter; the only three I do not know.

Q What part of the house did they occupy? A Well, they occupied the floor that we were on.

Q And it was in their apartment that this girl was living? A I did not see --

Q This girl Viola was living in that apartment occupied by this family? A She slept in that apartment.

Q Where was she sleeping? A Sleeping on the third floor Room 5.

Q Did she eat at their table? A yes, sir, so Mrs. Gries said.

BY MR. CAFFEY:

Q Do you know whether she ate at their table? A So Mrs.

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Gries told me.

MR. CAFFREY: I asked him if he would answer yes to anything.

THE WITNESS: I said so Mrs. Gries told me.

THE COURT: Counsel asked if this girl ate their table.

A I do not know.

MR. LEVY: Of course, he does not.

(The photograph referred to is marked Defendant's Exhibit A for identification.)

MR. LEVY: I offer it in evidence.

MR. CAFFREY: I object to it as irrelevant, incompetent and immaterial. We are not making any charges against this woman's family.

MR. LEVY: Merely to indicate to the jury the kind of a family it is.

THE COURT: It is offered, I suppose, on the theory that she was not induced to go to this house for an improper purpose; in other words under the abduction count, on the theory a man would not take a girl with whom he intends to consort to a house that is occupied by respectable people, particularly where there are young children. I will not allow it because it is incompetent, but if I were the prosecuting officer in this case I would allow it to go in.

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MR. CAFFREY: We don't make any charges that there was anything wrong done in that house. It was in the other house 27 Stuyvesant Place.

THE COURT: When the Legislature passed the Abduction Statute it contemplated taking a girl to a place which, of itself was a place of bad repute. Now it is a strong probability against a man if he takes a girl to a house of that kind or to a house where there are decent people, particularly children of tender years. However, I will exclude it.

MR. CAFFREY: The Prosecution concedes that he did not take her to the house 113 East 26th street for that purpose.

THE COURT: I have made some rulings here that perhaps would not be justified under a strict construction of the law, but this being a most extraordinary and most unusual case, I have determined to throw the doors wide open so that the truth may be ascertained, I don't know, by hook or crook, so that this jury will become intelligently informed on the issue here and everything surrounding it and everything that would lend probability or improbability to the story of the complaining witness because probabilities in my judgment are always approaches to the truth.

MR. CAFFREY: Your Honor will understand my posi-

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tion here. While I might be broad I want to see that nothing is done, from my standpoint, that might prejudice the rights of the People.

THE COURT: We have an extraordinary case here. The Doctor who testified before this Society, a most conscientious doctor he is, intimated in the course of his testimony here that the girl was malingering at one time, he stated that she was feigning or faking, I don't know which word he used. Then you have the testimony of this officer that the girl appeared to be dazed which would lead to a reasonable inference that she was somewhat irrational. Now the question is whether the jury would be justified in relying on the testimony of a person whose mind is not clear or whose mind is affected. She was put in the psychopathic Ward, I don't know why.

MR. CAFFEY: For observation.

THE COURT: She was put there and something must have occurred which induced the Society to put the girl in the psychopathic ward.

MR. LEVY: And another thing, your Honor, is it likely if he intended putting a girl in a house for the purpose of prostitution that he would give her his business card, and give her his letter paper and furnish her with full information as to where he was?

THE COURT: If I determine to send this case to the

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jury you may argue those matters to the jury.

MR. CAFFREY: I will concede that so far as the 26th street house is concerned there was nothing wrong done at 113 East 26th street, and that he did not take her there for immoral purposes. I will concede that. I will rest the case upon the house 27 Stuyvesant Place.

THE COURT: I shall confine you to that because I don't think I would be justified in submitting the matter to the jury whether the crime of abduction was committed in taking the girl to the house 26th street.

MR. CAFFREY: I agree with that reasoning.

BY MR. LEVY:

Q So far as you know is there anything against the record or reputation of Mrs. Voss, the housekeeper of the house, 27 Stuyvesant Place? A I never met the woman in my life, I don't know.

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

Q Did this girl at any time in her conversation with you, the complainant, Viola Muller, did she ever make a charge against the defendant that he had attempted or did perpetrate an act of intercourse--sexual intercourse with her?
(No answer.)

Q Do you understand that? A No, sir, I didn't just get that.

Q I want to make it clear Officer. You say you question-

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ed her as to whether or not she had any improper relations with any one that she made no charges against any one, is that right? A Not at that time.

Q I am talking of that time? A Yes, sir.

Q I am talking of the time -- A In 26th street she did not.

Q Did she say at that time that this defendant had had any improper relations with her? A No, sir, not at that time.

Q It was only after the police court proceeding? A Yes.

Q And after she was in the care of the Society? A Yes.

BY THE COURT:

Q Did you hear her testify in the police court? A Yes.

Q Did you hear her there testify that the defendant, Sherman did not perpetrate an act of sexual intercourse with her
A That I could not say.

BY MR. LEVY:

Q Were you in court when I read the minutes?

THE COURT: I excluded all the witnesses.

MR. LEVY: She testified before the Magistrate, with your Honor's indulgence -- perhaps this is out of the regular order, but I think in the interest of justice I should state it-- she testified according to the minutes before the Magistrate that when the defendant got into bed with her that night in the Stuyvesant street house that she would not let him have anything to do with her; that

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he simply touched her. Do you remember hearing that?

THE WITNESS: Well, that was after the case was put over for character witnesses in the Fourth Court.

Q Did you hear her say that in the police court? A No, sir; she said something to that effect.

Q Now, then with regard to her dazed condition. She was sent to the psychopathic ward in Bellevue Hospital?

Conceded.

Q Do you know why she was sent to the psychopathic ward at Bellevue Hospital which is the department intended to inquire into mental disturbances, why was she sent there? A I don,t know what ward she went to.

MR. CAFFREY: I object to that. The officer is not qualified to testify to that.

THE COURT: I will take judicial notice of the fact that people are sent to the psychopathic ward where they are suspected of psychosis, disease of the mind. They are sent there for observation as to their mental condition.

MR. LEVY: And the case presents the question whether a man ought to be convicted upon the testimony of an irresponsible person, I mean one who is mentally irresponsible. That is what I am trying to develop.

THE COURT: I want to know what this girl's condition was.

Q Did you have anything to do with her being sent to the

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psyshopathic ward? A No, sir.

Q Did you take any part in it? A No, sir, I did not.

Q Did she tell you she had a father and mother living?

A She did after a while.

Q I mean in the beginning? A No, sir, her mind was dazed.

Q Did she tell you that she told this defendant that she was the daughter of a Mason, and that he helped her out because of the distress she was in? A No, sir, Siegel told me that-- Sherman told me that.

Q Did she say her father was dead? A She said she didnt know where her mother and father were.

BY MR. CAFFREY:

Q Now when you placed the girl under arrest, did she tell her what she was arrested for? A After I made the identification by Lieutenant Brady of the Newark police I charged her with improper guardianship.

Q Did you say anything to Viola about Sherman? A Yes, sir.

Q What did you say to her about Sherman? A I said do you know Sherman, and she said she knew Sherman.

Q At that time was there any charge against Sherman, I mean in this case, was there any charge against Sherman with regard to him committing a crime against this girl? A No, sir.

Q At that time you had no suspicion? A No, sir.

Q That there was any charge against Sherman? A No, sir, I did not.

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Q You were seeking her arrest on a charge against a man named Beatty in Newark? A Beatty was arrested the day before.

Q You were looking for her in the Beatty case? A Yes, sir.

Q So therefore at that time you had no idea of Sherman?

A No, sir; I had no idea of Sherman whatever.

Q You hadn't heard anything about Sherman? A No, sir. I didn't know about him having brought her there.

Q Did you ask her whether Sherman had had sexual intercourse with her? A I did.

Q Why did you ask her that? A Well, I asked her because she was in the room with him. I asked her if anybody had any intercourse with her.

Q Did you ask her specifically whether Sherman had had any sexual intercourse with her or whether anybody had any intercourse? A I said to her "now tell me did Sherman have anything to do with you", I put it that way?

Q That is what I want to get at. Did you put it that way? A Yes, sir. She said no. When I brought her to the police station she spoke to me; she called me over and she said "Are you a married man? A I said yes. She said, "I want to tell you something. I just got sick." She was menstruating. So I called up the police matron and I went around to the drug store, and I got her some bandages. On the way I says, "Now tell

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the truth. We are here to help you, not to harm you. Did anybody have anything to do with you, and she said no. I says, tell me, Viola, she says, no at that time.

Q Now, Officer, did you at any time after that hear her say that Sherman did have intercourse with her? A No, sir, not until after awhile I heard it from the Society.

Q You knew there was a complaint in the magistrate's Court against Sherman, didn't you? A Yes.

Q You saw her sign that affidavit that she signed, the corroborating affidavit on the abduction charge? A Yes, sir, on the abduction charge.

Q Against whom? A Benjamin Sherman.

Q In the Magistrates' Court? A Yes, sir.

Q You knew that, didn't you? A Yes, sir, at the time that was drawn up we knew nothing about the other place.

Q There was an examination in the magistrates' Court on this abduction charge? A On the abduction charge.

Q So there was nothing said about the rape charge in the Magistrates' Court? A No, sir, nothing at all.

Q The only testimony that was given in the Magistrates' Court was on the abduction charge? A The last day of the trial.

Q Was there any examination on any rape charge in the Magistrates' Court? A One witness on the last day.

Q In what case? A In this case here.

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Q You mean the abduction case? A yes, sir there was a witness Selma Voss.

Q That was the abduction case? A yes, sir.

Q There was no rape case in the Magistrates' Court, was there? A No, sir.

MR. LEVY: There wasn't more than one case, was there, one complainant and one defendant, the complainant is Viola Muller and the defendant was Sherman?

A Yes, sir.

BY MR. CAFFREY:

Q And that case was the abduction case in the Magistrates Court? A Yes, sir charged with abduction.

MR. CAFFREY: I offer the complaint in the Magistrates' Court in evidence.

MR. LEVY: I object to it as being incompeten.

MR. CAFFREY: The purpose of it is to show that the rape charge on which you are proceeding and about which there has been so much testimony on cross examination -- there there wasn't any examination on the rape charge in the Magistrates' Court. This defendant was held on the abduction charge in the Magistrates' Court.

THE COURT: I noticed that.

MR. CAFFREY: Afterwards the defendant was indicted by the Grand Jury for rape and abduction, the rape occurring in 27 Stuyvesant Place.

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THE COURT: I noticed that.

MR. CAFFEY: The objection is predicated upon what happened in 113 East 26th street.

FRANCIS MULLAHEY, a witness called on behalf of the people, being duly sworn, testified as follows:

(The witness states he is a police officer, attached to the 36th Precinct, Detective Division.)

DIRECT EXAMINATION BY MR. CAFFEY:

Q Now, Officer Mullahey, you are an officer of the police force of the city of New York, and were such on the 18th of April, 1919? A I was.

Q You were at that time attached to the 32nd Precinct?

A Yes, sir.

Q And also to the Detective Bureau? A I was.

Q You arrested the defendant? A Yes, sir.

Q In April? A Yes, sir.

Q What date? A April 18th, 1919.

Q Where did you arrest him? A No. 14 West 31st street.

Q At the time you placed him under arrest did you find People's Exhibit L, that vanity case, in his office? A I did.

Q Did you have a conversation with the defendant? A I did.

Q State to the Court and jury what it was? A Sherman stated that he had met Viola Muller at 37th street and Broadway

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about 10 p.m. on April 30th, 1919; she told him she was an orphan, had come from Boston, had friends living in Newark, and that she had an appointment with a photographer name not given, in Childs Restaurant at 42nd street and Broadway. Sherman and Viola walked to 23rd street and Broadway and the Viola walked west and he told her to call at his place of business the next day, Monday, April 14th.

Q Is that all the conversation you had with him? A He said that he brought the girl to 113 East 26th street, a furnished room house the following morning at 10 a. m., that is April 14th; that he hired a room for the sum of ten dollars for two weeks for the week's board; he took this vanity case from a drawer in the desk and said here is a vanity case I had an argument with her last night." That is all the conversation we had there.

Q Did you at any time after that have any conversation with him? A Well, I did.

Q Where? A In the 21st Precinct station house.

Q When was that? A On the same day.

Q Let have that? A About the same conversation, the same story told over again.

Q The same story? A Yes, sir.

Q That is all you know about the case, do you know anything further about the case? You had no further conversation with the defendant? A No, sir.

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Q That is all you know about the case? A That was all the conversation I had with him.

MR. LEVY: No questions.

MR. CAFFREY: Now, if your Honor please, that is my case.

THE COURT: Where is the mother of the girl?

MR. CAFFREY: I only needed to call the mother to prove the age and it is admitted.

THE COURT: I want to know the exact age.

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

(The witness states he lives at 20 Baldwin street, Newark, New Jersey.)

DIRECT EXAMINATION BY MR. CAFFREY:

Q Mrs. Muller, what is your name? A Regina Muller.

Q Are you the mother of the complaining witness in this case Viola Muller? A Yes, sir.

Q How old is Viola Muller? A Fourteen years.

Q Fourteen? A Yes, sir.

Q When was she born? A August 1st, 1904.

Q Where was she born? A In Newark.

MR. CAFFREY: While the witness is on the stand may Mr. Pizarra, the Society man, Mr. Levy and myself have a conference with your Honor in the presence of this woman?

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THE COURT: Yes.

(At the conclusion of the conference.)

MR. LEVY: Shall I continue the cross examination of the complainant?

THE COURT: The Court has directed the witness Viola Muller to come back to the stand for further cross examination, but she declines to take the stand.

MR. CAFFREY: She is suffering from a female complaint that has just come upon her. I expect to get word from Mr. Pizarra in a couple of moments, if your Honor will wait.

If it please your Honor of course, this has been a somewhat lengthy trial, having occupied two days, and some might think, in view of the motion that I am about to make, that that time has been needlessly spent. Now, the charge was made in this case, and it was supported by what the District Attorney believed to be ample corroboration. I made a very careful examination of the complaining witness, and during my very rigid examination she did not present the frailties and the contradictions that she did in her testimony upon this trial. I believed that the charge against this defendant was justified, I believe that the girl told the truth. I believed that the defendant was guilty of this charge, and I say that because I am thoroughly convinced that any action that was taken in this case by the complainant and by the Socie-

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ty was thoroughly justified. Now, after these two days spent and going into the case very carefully it does appear that the complaining witness was suffering from some hallucinations, and we are unable to determine the exact condition of her mentality, at least it is somewhat dubious. She has been for a period of ten days in the observation ward of Bellevue Hospital, and she was discharged, as it appeared she was shamming. Now, on the witness stand she has made contradictions, and I may say for the purposes of the record, that the representatives of the Society told me this afternoon that they received information that at the time the girl was placed under arrest that a number of powders were found upon her person -- one powder was found concealed upon her person, and that was sent to the City Laboratory for chemical analysis and they reported that the contents of that powder were heroin, a habit forming drug. Now, under the circumstances I feel that it would be unsafe to ask to proceed further with the trial. On the evidence as presented, there seems to be such a reasonable doubt as would justify the jury in acquitting the defendant, and the cause of that anomalous position I am constrained not to take up any further time of the Court -- and in this I am joined by the representative of the New York Society for the Prevention of cruelty.

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to Children-- I move that your Honor instruct the jury to acquit.

THE COURT: I feel that the girl's mind is disturbed. Judge O'Brien in the case of the People against Ledwon reported in the 153rd New York said that "Where the evidence was of a doubtful character -- or even though the evidence was of doubtful character tends to connect the defendant with the commission of some alleged crime that the Court should not send the case to the jury. His language in that case was this: If the evidence shows either that there was no evidence whatever or that the evidence did not, as a matter of law, come up to the standard which the law required to warrant a conviction it would be error if the Court denied a motion made by counsel for the defendant to take the case from the consideration of the jury."

I feel that the evidence in this case comes clearly within the rule laid down by Judge O'Brien of the Court of Appeals, who was in his time one of the most forceful Judges we had in the higher court of this State. I am entirely in accord with you that there is not enough here to sustain a conviction. If this case should go to the jury and this defendant was convicted I am quite certain the Appellate Division would reverse the judgment. The motion is

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granted.

(The jury return a verdict of not guilty.)

160 1/2

80
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