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

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THE PEOPLE OF THE STATE OF NEW YORK :

vs.

: Before :

JOSEPH GIBSON.

: HON. JOS. F. MULQUEEN, J.,

: and a jury.

----- x
New York, June 18, 1919.

The defendant was indicted for rape in the second degree,
assault in the second degree and abduction.

Indictment filed *May 22, 1919.*

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

For the People:

ASSISTANT DISTRICT ATTORNEY BOHAN.

For the Defendant:

Messrs. Embree & Fabricant (Mr. Fabricant, of counsel).

A jury was duly impaneled and sworn.

MR. Bohan opened the case to the jury.

MR. FABRICANT: We will concede that the girl was under
the age of 18 years, although in view of the opening of the
Assistant District Attorney I regard that as immaterial, he
having stated he will submit this case to the jury upon the
theory of assault in the second degree only.

THE COURT: If the girl was only 14 years⁸/₇ age and the
defendant tried to have sexual intercourse with her that

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would be assault in the second degree.

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MR. FABRICANT: Well, I shall in the course of the trial take exception to your Honor's view of the law, if that is your view.

MRS. CATHERINE SHANKS, (691- 8th avenue),
called as a witness on behalf of the People, being duly sworn, testified as follows:

MR. FABRICANT: I will concede that the girl is under 18 years of age.

DIRECT EXAMINATION BY MR. BOHAN:

Q Are you married, Mrs. Shanks? A Yes.

Q Is your husband living? A Yes sir.

Q Where do you live? A 691 Eighth avenue.

Q Between what streets is that? A Between 43rd and 44th streets.

Q Have you a daughter named Helen? A Yes.

Q How old is she? A She is 14 years old.

Q When was she born? A 1904, on the 8th day of July.

Q Where was she born? A In New York City.

Q At that time did you live at 512 West 49th street, when she was born? A Yes.

(Helen Shanks was brought into the court room and stands at the rear)

BY THE COURT:

Q Is that the girl, Helen Shanks? A Yes sir.

Q She is your daughter? A Yes sir.

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Q That is the girl you have been talking about? A Yes
sir.

BY MR. BOHAN:

Q What is your husband's first name? A Thomas.

Q He is the father of Helen Shanks? A Yes sir.

MR. BOHAN: I offer at this time the certificate of
birth of the Department of Health No. 30619 in evidence.

MR. FABRICANT: No objection.

Marked People's Exhibit 1 in evidence.

(Mr. Bohan reads Exhibit 1, as follows:)

"Certificate of the Board of Health of the City of New
York, No. 30619."

Q Where was your daughter Helen born? A Sloan's
Maternity, 59th street and Amsterdam avenue.

Q "Sex Female

"Color White

"Date of birth July 8, 1904.

"Place of birth, street number Sloan's Maternity
Hospital.

"Father's name Thomas Shanks.

"Father's residence, 512 West 49th street.

"Father's birth place, U. S."

"Father's age, 35.

"Father's occupation, boiler maker.

"Mother's name, Katie Shanks.

"Mother's name before marriage, O'Brien."

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"Mother's residence, 512 West 49th street.

"Mother's birth place, U.S."

"Mother's age, 23.

"Number of previous children, 2.

"How many now living? 3.

"(signed) Reginald Lauberstein, M.D."

"Sloan's Maternity Hospital.

"Bureau of Records, received July 4, 1904."

THE COURT: Have you any objection to sending that book back, Mr. Fabricant?

MR. FABRICANT: No sir.

Q Mrs. Shanks, did you ever meet this defendant? A Yes sir.

Q When? A I met him in December when my daughter came home on a Friday night with two big oranges. I spoke to her and I said, "Helen, where did you get the oranges?"

Q Never mind that.

Objected to. Objection sustained.

Q Where did you meet him? A I met him at 513 Eighth avenue, where the girl had brought me up to his room.

Q Did you ever meet him after that? A No sir.

MR. BOHAN: That is all. You may examine.

MR. FABRICANT: No questions.

BY THE COURT:

Q Who was with you when you went to his room? A My daughter.

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Q. You saw him there, did you? A Yes sir.

Q. Did he say anything to you then? A I asked him about the girl.

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

Q. Did he make no answer at all? A He denied it, he said "No."

Q. Then he said something? A He said "No."

DR. WILLIAM TRAVERS GIBB, (42 West 75th street), called and sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. BOHAN:

Q. Doctor Gibb, you are a duly licensed physician in the City of New York? A Yes sir.

Q. Are you connected with the Society for the Prevention of Cruelty to Children? A Yes, I am their examining surgeon.

Q. How long have you been such examining surgeon? A 28 years.

Q. Did you make a physical examination of Helen Shanks on the 17th of May of this year? A Yes sir.

Q. Is this the girl you examined (Helen Shanks walks into court room and stands at the Bar)? A Yes sir.

Q. Where was that examination made? A At the rooms of the Society, 297 Fourth avenue.

Q. Did you make an examination of her genital organs?
A Yes sir.

Q. Will you state what the condition of her genital organs

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was on the 17th of May this year? A I found her hymen complete-
ly ruptured, indicating complete penetration of her genital or-
gans by some blunt object.

Q And from your examination would you say she was in con-
dition at that time to perform sexual intercourse? A Yes sir.

MR. BOHAN: Your witness. You may examine.

CROSS EXAMINATION BY MR. FABRICANT:

Q Will you tell us just what you found? A I found her
hymen completely ruptured, indicating complete penetration of her
genital organs by some blunt object.

Q Could you tell from the examination, reasonably, whether the
penetration was recent before that examination or not? A I could
not tell because the parts were entirely healed.

Q How long does it take for the parts to heal? A From three
to ten days.

Q Is it possible for the parts to heal within three days af-
ter the initial penetration? A I have never seen a case that
healed up as quickly as that if there was any rupture at all.

Q How long is the average healing process? A Between three
and 10 days. Sometimes where the tear is not very great and the
hymen is thin it takes three or four days to heal. If the hymen
is thick and the tear is extensive it takes a longer time, usually
about ten days, and in some cases longer.

Q Did you make an examination of this girl's hymen? A Oh
yes.

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Q Was it a thin or thick hymen? A The hymen was ruptured; there were remains of it. I would say it was an ordinary hymen.

Q Then if it had healed in three days you would regard that as extraordinary? A Yes.

MR. FABRICANT: That is all.

HELEN SHANKS, (691 Eighth avenue), called and sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. BOHAN:

Q Helen, now talk up loud enough so that the last gentleman of the jury can hear you. How old are you? A 14.

Q When was your birthday? A July 8th.

Q When will you be 15? A Next July 8th.

Q Next month? A This month.

Q What month is this? A June.

Q Do you go to school? A Yes sir.

Q What school do you go to? A 47th street, P. S. 17.

Q To public school? A Yes.

Q What number is it? A P. S. 17.

Q How long have you been going to that school? A A long time.

Q Is that the first school you ever went to? A No.

Q You live at 691 Eighth avenue? A Yea.

Q What street is that near? A Between 43rd and 44th.

Q On what avenue do you live on? A On the west side.

Q What avenue, 6th, 7th or 8th avenue? A 8th avenue.

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Q On the west side of 8th avenue? A Yes sir.

Q What class are you in? A I am in the ungraded class.

Q When was the first time you ever saw Mr. Gibson? A In January.

Q Where did you first meet him? A I met him while I was passing his doorway. I seen him at the door and he told me to come in his house.

Q When was the first time you went to his house? A In January.

Q The first day you met him? A No.

Q Where was his house? A 513 Eighth avenue.

Q How far away is that from your house? A Down 35th street is his house.

Q What floor is his home on? A One flight up.

Q How many rooms has he got? A He has only got one room.

Q Is that room in the front or back? A In the front.

Q How many times have you been in that room? A Five times.

Q Have you always been alone? A Yes sir.

Q Do you remember the last day you were there on May 14th?

A Yes sir.

Q That was the day the officer came in? A Yes sir.

Q What time did you meet Gibson that day? A I did not meet him. I came home from school and he seen me.

Q He saw you where? A 46th street and 8th avenue.

Q Did he talk with you? A No. I passed with the girls

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going down on 8th avenue.

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Q What did he say to you? A Then I did not talk to him, so I went up into the house and I went to the store and then when I came down he was in 42nd street.

Q What corner? A On the west side.

Q What time was that? A Around 4 o'clock.

Q Where did you go then? A Then I went down 8th avenue.

Q Which side, the west side? A Yes sir.

Q With the defendant? A No sir.

Q You went alone? A Yes sir.

Q Down to his rooms? A No, I walked down, looked at the movies and he called me over to his room.

Q What did he say when he called you over at the movies?

A Well, he told me to come up to his house.

Q Did you go up to his house? A Yes.

Q Did you walk with him? A No.

Q Did you walk alone? A Yes.

Q Who went up first? A He did.

Q How soon after did you go up? A I went right back of him and he raised his hand to the window for me to go up.

Q Where was this movie, you say? A Right near 35th street.

Q On 8th avenue near 35th street? A Yes.

Q Where was he. Did he come over to the movie or call you from his window? A He called me from the window.

Q That is, his house was on the same side as the movie?

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A. Yes.

Q And you went up to his house? A Yes sir.

Q Was that the first time you went up, or are you speaking now of the 14th of May, the last time? A Yes sir.

Q The last time? A Yes sir.

Q When you got into the room what did he do? A Then he told me to take off my clothes.

Q Did you take them off? A Yes.

Q What did you do then? A Then he laid over me.

BY THE COURT:

Q Was there any furniture in the room; do you know what furniture is? A Yes sir.

Q Was there any furniture there? A He only had one couch and one table and a lamp.

Q A couch and a table? A And a lamp.

BY MR. BOHAN:

Q Did you lie down? A Yes sir.

Q On what? A On the couch.

Q Did you take off all your clothes? A No, only my bloomers.

Q Then what did the defendant do? A He laid on me.

Q Did he take off any of his clothes? A No. He took his thing out.

Q What did he do with his thing? A Then he put it in.

Q He put it in your privates? A Yes sir.

Q While you were lying on the couch did you hear anything?

A No sir.

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Q Did anything happen? A No sir.

BY THE COURT:

Q Did any one come to the door? A When I got done somebody came at the door.

Q You were not lying on the couch then? A No.

Q What did they say. Did they say, "Open the door"?

A The cop said, "Open the door".

Q Did you open the door? A The man opened the door.

BY MR. BOHAN:

Q Did he say anything to you before he opened the door?

A The cop walked in.

Q Before he opened the door did Gibson say anything to you?

A No.

Q When the officer came in what did the defendant say?

A He said that I only came here for money to go to the movies.

Q How was the door locked? A It had a key.

Q On the inside? A Yes sir.

Q Was there a bolt, or just a key? A No, a bolt.

Q Did you have a talk with the officer while Mr. Gibson was standing there? A Yes sir.

Q What did you say? A I told him what he did.

Q Tell us what you said? A I told him that he laid on me ~~and he told me~~ and he told me to take off my bloomers.

Q What did Gibson say at that time when you told the officer that? A Then he told me not to tell, he was going like that to me (indicating. Witness putting up her hand to her face).

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Q Where was Mr. Gibson standing when the officer was talking to you? A In back of the cop.

Q What was Mr. Gibson/while you were talking to the cop?
doing

A He was going like this with his hands, not to tell (witness indicating by putting her hand up to her face).

Q Putting his hand where? A To his mouth.

Q After you told the policeman did you hear Mr. Gibson say anything to the policeman? A No sir.

Q Do you remember anything else that was said? A No sir.

Q How many times have you been in that room? A Five times.

Q How many times did you lay down on the couch? A Four.

Q On each occasion did he put his thing in your private parts?

MR. FABRICANT: Objected to as not within the issues, being an effort to prove other crimes.

Objection overruled. Exception.

A Yes sir.

Q Did he ever give you any money? A Yes sir.

Q How much? A Sometimes two dollars, sometimes a dollar, and a dollar and a half.

Q Did he ever give you anything else? A No sir.

Q Did you ever bring your mother down there? A Yes sir.

Q When was that? A On a Saturday.

Q What month?

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THE COURT: This was before the arrest, was it?

MR. BOHAN: Before the arrest.

THE COURT: How long before the arrest?

MR. BOHAN: I think the mother said in December.

JUROR NO. 1: Is it any harm to ask that girl what she done with the money she got from the man?

THE COURT: You may ask her, but it is not material what she did with it.

BY MR. BOHAN:

Q What did you do with the money he gave you on each occasion? A I used to buy War Savings Stamps and Thrift Stamps.

Q What else, did you go to the movies? A Yes sir.

Q And buy candy? A Yes sir.

MR. BOHAN: That is all. You may examine.

CROSS EXAMINATION BY MR. FABRICANT:

Q Helen, when this man Gibson asked you to lie down on the couch was he near you? A Yes sir.

Q What did you do? A Then I laid down and then he laid on top of me.

Q Did you lie down yourself or did he put you down? A I laid down myself.

Q When he waved his hand to you through the window and asked you to come up, did you know what you were going there for?
A Yes.

Q Did you go there expecting to lie down for this man?
A No sir.

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Q You did not? A No sir.

Q Did you say, while this man was on top of you, "Oh, it hurts"? A No sir.

Q You did not say that? A No sir.

Q And it did not hurt, did it? A No sir.

Q Do you say he put his thing into you? A Yes sir.

Q Had anybody ever done that to you before? A No sir.
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Q Then this day that the officer came there was the/time
that anybody in the world had ever done that to you? A Yes
sir.

Q When you laid on the couch these other three times did
this man do anything to you like that? A No sir, not much.

Q You never had anything to do with any other man like that,
did you? A No sir.

Q And you first met this man Gibson around December last
year? A Yes sir.

Q So this last time when he was arrested, was that the
first time that anybody had ever put his thing into you? A No
sir.

Q Who had put his thing into you before? A He did.

Q This same man? A Yes sir.

Q How long before May 14th of this year? A I don't know.

Q Was it just before your mother went up in December to see
him? A I guess so, yes.

Q And you say that was the first time that anybody had ever
done anything like that? A Yes sir.

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Q While you laid down on this couch yourself, did you?

A Yes sir.

Q And where was Gibson when you laid down that way? A He was taking out his thing.

Q And you were lying on the couch? A Yes sir.

Q Had you taken off your bloomers? A Yes sir.

Q You had taken them off? A I had them off.

Q When did you take them off? A Before, when he told me to lay down.

Q Did he ask you to take them off or did you take them off yourself? A I took them off myself.

Q You knew what you took them off for, didn't you? A Yes sir.

Q And you expected this man to do this, to put his thing into you, is that right? A Yes.

Q How much did you expect to get from him that day? A I don't know, he had no change.

Q How much did you expect to get from him that day?

BY THE COURT:

Q When you went upstairs you expected to get some money, did you? A Yes.

Q You knew what would happen when you went in there? A Yes.

Q The lawyer wants to know now how much you expected to get. Did you have any sum of money in your mind. Did you expect to get 50 cents a dollar or two dollars? A He told me he was going to give me a dollar when I go up.

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L Q When did he tell you that? A He told me that if I would
do it. 16

Q Did he tell you that on the street? A Yes.

Q When he met you on the street? A Yes.

Q He told you he would give you a dollar? A Yes.

Q So you expected to get a dollar? A Yes sir.

BY MR. FABRICANT:

Q You are sure that you never had anything to do with any
one else like that? A Yes sir.

Q When the officer came in, who opened the door? A The
man.

Q Mr. Gibson? A Yes sir.

Q Did you see whether his trousers were open down here at
the fly or not when he opened the door? A No, it was closed.

Q His trousers fly was closed? A Yes sir.

Q You saw that? A Yes sir.

Q Did you see him close his trousers fly? A Yes sir.

Q When the knock came on the door did you jump up from the
couch? A No, I was putting on my coat.

Q Then you had already gotten off the couch when the knock
came at the door, is that right? A Yes.

Q How long did you stay in this room altogether? A I went
in at a quarter to five.

Q How long did you stay there? A I never looked at the
time when I came out.

MR. FABRICANT: That is all.

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REDIRECT EXAMINATION BY MR. BOHAN:

Q Do you remember when you were lying on the couch, and Gibson on top of you, do you remember saying anything to him?

A No sir.

Q Do you remember whether you said anything? A I did not say nothing.

Q Do you remember whether he said anything? A He told me to pull up my legs.-

Q Did he tell you anything else? A No.

Q To pull up, or to open your legs? A To open my legs.

Q Was that while he was lying on you? A Yes.

Q Do you remember making any answer to that? A Yes.

Q What did you say? A I pulled them open.

Q Did you say anything else? A No sir.

BY THE COURT:

Q Did you tell him he was hurting, or anything of that kind? A Yes sir.

Q You did say that? A Yes.

Q Did his thing hurt you? A No sir.

BY MR. FABRICANT:

Q Didn't you say it hurts? A No sir.

Q You did not say that at all? A No sir.

Q And it did not hurt you? A No sir.

Q Did you say anything when he told you to open your legs?

A No sir.

MR. BOHAN: That is all.

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MR. FABRICANT: May I ask that the witnesses be excluded after they have testified.

THE COURT: Yes, let them go into the Grand Jury room.

J A M E S T U O M E Y, (Officer of 22nd Precinct, Shield No. 8594), witness called and sworn on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. BOHAN:

Q Officer, you are a member of the police force of the City of New York? A Yes sir.

Q On the 14th of May of this year were you on duty on 8th avenue near 36th street? A Yes sir.

Q What Precinct are you attached to? A 22nd Precinct.

Q Were you in uniform? A Yes sir.

Q Did you see the complaining witness Helen Shanks?

A I did.

Q Did you see the defendant? A I did.

Q What time did you see them? A About 4:30 P. M.

Q Who did you see first? A I first saw Helen Shanks, she was going off on 8th avenue between 36th and 37th streets.

Q On which side of the street? A East side of the avenue. I was on the east side of the avenue.

Q Where was your attention first attracted to the defendant? A As I was standing at the corner of 36th street and 8th avenue the defendant passed me. He was following Helen Shanks, walking at a fast gait as if to overtake her.

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Q Where did he go? A They went -- as far as 37th street and 8th avenue and then came back to the south side of 36th street, when the defendant crossed the avenue from east to the west side of the avenue, and went in premises 513 Eighth avenue.

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

Q Who went in there first? A The defendant.

Q Did he enter alone? A Yes sir.

Q Where was the girl? A She stood directly opposite on the east side of 8th avenue.

Q Where did you next see the defendant? A I saw him at the window of 513 Eighth avenue, one flight up, front.

Q Was the window open or closed? A The window was closed.

Q And what was he doing? A He stood at the window and beckoned to Helen Shanks to come up.

Q Tell us what he did. Describe his movements. A When I first saw him the curtain of the window shade, the roller was at the bottom of the window. It is attached with a string. I saw the curtain go down and then saw him beckon to Helen Shanks to come up (indicating).

Q When you saw him make that movement did you have your eye on the girl, Helen Shanks? A Yes.

Q What did you see her do? A She went across the street and went into the premises.

Q How long was she in the premises when you followed?

A Probably three minutes.

Q Did you see what room she went into? A I did not see her

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go into the room.

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Q What floor did you go to? A One flight up, in the front, the hall room.

Q What door? A Front, the hall.

Q Leading to what room? A The hall room.

Q Did you hear any voices? A I did.

Q Where did you stand? A Right outside the door.

Q Did you hear a man's voice? A Yes sir.

Q Did you hear a girl's voice? A Yes sir.

Q State what you heard the man's voice say? A I heard a man say "Open your legs a little bit; hold it up, there, that is right, that is better."

Q Did you hear the girl's voice say anything? A Before that I heard the girl say "You are hurting me, oh, you're hurting, not so hard".

Q Is that all you heard before you did anything? A Yes sir.

Q What did you then do? A I tried to push the door in but it was locked on the inside.

Q Did you hear any voice inside say anything? A I heard some one say "Get up".

Q What was done then? A The defendant came to the door and opened it.

Q Did you hear the latch snap? A Yes sir.

Q When you went in did you see any one in the room?

A I saw the defendant and Helen Shanks.

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Q Will you describe the condition of the clothing of Helen Shanks; where was she, standing first or sitting? A She was sitting on the couch putting on her coat, a long bluish cloak.

Q Describe the kind of room it was, what was the furniture?

A It is a very small hall room about maybe 8 by 10.

Q Is there a bed in it? A A bed couch, a bureau, a chair, a lamp and a clock.

Q You say she was sitting on the couch fixing her coat?

A Yes, putting it on.

Q Where was the defendant Gibson standing? A At the door.

Q Can you describe the condition of his apparel? A The fly of his pants was open, otherwise he was fully dressed.

Q Did you have a conversation with the defendant?

A I did.

Q Who did you first talk to, the defendant or the little girl? A The defendant.

Q What did he say? A He said, "This girl came up here to panhandle me for 11 cents to go to the moving picture show." He said he did not give it to her.

Q Is that all he said? A Yes sir.

Q Did you have a talk with the girl? A I did.

Q While the defendant was standing there? A Yes sir.

Q What did she say in the presence of the defendant?

A She said the man coaxed her up to the room and was going to

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L give her some money. I said "How much?" She said, "He did not give me any money yet but he is going to." I said, "What for?" She then told me she was afraid to tell me. So I took her over to the door. I said "I want you to tell me the truth, unless you want to go to jail." Well she said, "He laid on me, that is what he was giving me the money for." I said, "Did he do anything else?" She said, "Yes, he stuck his thing into me."

Q What else? A She said she had been up in the room before on four or five occasions and he had always given her money, from 50 cents to a dollar.

Q What did the defendant say after he heard the girl say that? A He said "Oh no, you are mistaken, you never saw me before."

Q Did he say anything else? A He said he had seen her; he admitted seeing her in the street but never saw her in the room.

Q In that room, where was the defendant standing while you were talking to the girl? A When I first started to question the girl, she was standing to my right and the defendant was standing to my left. When I started questioning the girl, that is the way they were standing. The defendant then moved around behind me and while I was questioning the girl the defendant was shaking his head and saying "sh" behind my back.

Q Was he putting his hand any place? A To his mouth, saying "sh", shaking his head. I made him turn around and face

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in the other direction. He stood in that position until I²³
was finished questioning her.

Q Do you remember anything else he said? A After I told him he was under arrest he said, "I don't know why you are arresting me. I can get money enough to pay for any damage I have done in this case, if you will let me go in next door."

Q Did he say anything else? A Not that I remember.

MR. BOHAN: Your witness, you may examine.

CROSS EXAMINATION BY MR. FABRICANT:

Q When you came in there it was about three minutes after you saw the girl enter the room, is that right? A Probably five minutes when I went into the room.

Q Did you keep careful tab of the time that elapsed from the moment the girl went into the building? A About the time.

Q You were observing the length of time, weren't you?

A Yes.

Q And you say you reached there about three minutes after the girl went in? A About that time, yes sir.

Q How long did you stay at the door? A Probably two or three minutes more.

Q And you heard the girl say "Not so hard, it hurts"?

A "You are hurting me."

Q And then when the door was opened the defendant had the fly of his trouser pants open, is that correct? A Yes.

Q Did he fumble around with his trousers trying to button

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up his fly? A He did.

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Q You saw that also? A Yes sir.

Q You heard the defendant go "sh" when he stood behind you?

A Yes.

Q You did not look behind you to see what he was doing at that moment, did you? A When I heard him I looked around.

Q He made an audible sound which you heard when he stepped behind you? A Yes.

Q Did you see him shake his head? A Yes.

Q That is, you looked immediately behind to see what he was doing? A Yes.

Q And you caught him shaking his head? A Yes.

Q But the sounds "sh, sh", came before you looked around?

A Yes.

MR. FABRICANT: That is all.

MR. BOHAN: The people rest.

MR. FABRICANT: I would like to know now from the District Attorney on which count of the indictment he intends to proceed on.

THE COURT: There is evidence sufficient to sustain a charge of abduction and assault in the second degree.

I will take the count of rape in the second degree away from the jury.

MR. FABRICANT: I respectfully move to dismiss the second count of the indictment charging assault in the second degree on the ground that it affirmatively appears from the evidence

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that the complaining witness consented to any act that might have been done by the defendant at the time, and that no grievous bodily harm was committed upon the complaining witness at the time, and further that no weapon of any kind was used.

THE COURT: I will charge this jury that if he placed his hands on her body with intent to have sexual intercourse with her, it constituted assault in the second degree. That makes a very clear issue of law. A girl of 14 years of age cannot consent to have sexual intercourse with any man not her husband, and if any one attempts to have it even with her consent he is guilty of a crime. If he placed his hand on her in an attempt to commit a felony, that is assault in the second degree.

MR. FABRICANT: I respectfully except.

THE COURT: And if he brought her into his room for the purpose of having sexual intercourse with her, that is abduction. So those are the two charges. We will eliminate the question of rape. I will also charge the jury that there is a charge of impairing the morals of the complainant; that may be brought in under this indictment. Impairing the morals of a minor is a misdemeanor, and there is a sufficient allegation of the elements of that crime here to warrant my submitting that charge to the jury, just as the crime of unlawful ^{entry} may be entered into a burglary charge.

MR. FABRICANT: I agree with your Honor, yes, in view

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of the fact that the indictment charges the age of the complainant to have been 15 years, the crime of impairing morals is included, and that would be proper.

THE COURT: The question of fact for the jury to determine is whether or not the defendant committed any crime charged in the indictment.

MR. FABRICANT: Will you consent, Mr. Bohan, to offering in evidence this letter which came from Bellevue Hospital concerning the defendant.

THE COURT: I will tell the jury there is no question of rape here. I am not going to submit that, on account of his age. We will admit he was physically unable to commit rape, or to insert his private parts into the girl's private parts. But notwithstanding his physical disability he could still be guilty of the crimes I have mentioned, abduction, or an attempt to commit rape in the second degree, or assault in the second degree, or impairing the morals of a minor child.

MR. FABRICANT: The contents of the letter, I think, would bear greatly on the case.

MR. BOHAN: I will consent that the letter offered by the defendant was written by Doctor Jewett.

MR. FABRICANT: I think the probabilities of the situation would be greatly facilitated if the contents of this letter were read, and would help the jury in deciding the

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truth of the story.

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MR. BOHAN: Well I consent that the letter be read
in evidence.

Letter marked Defendant's Exhibit A and is read
as follows:

"City of New York, Bellevue and Allied Hospitals. Office
of the General Medical Superintendent; Bellevue Hospital,
First avenue and 26th street, New York City. June 12, 1919.

Sir: I beg to submit the following report in the case of
Joseph Gibson, who was sent to this hospital for examination
and an opinion regarding his ability to perform sexual inter-
course.

While here this man has been subjected to a very care-
ful physical examination with particular reference to his
genital organs, both in the prison ward and by the physician
in charge of the urological department. We find a man who
is a few months over 80 years of age, according to his own
story, and whose genital organs show atrophic changes. They
are flaccid and do not respond to any stimulation which we are
able to apply. It is therefore our opinion that this man
is not able to perform a normal sexual intercourse, and it is
doubtful if he would be able to make penetration.

Aside from the condition of genitals, he shows the
usual physical signs found in old age; that is, arcus senilis,
mild arterial hardening, atrophic changes in the skin, etc.
He also has chronic disease of the heart. Respectfully,

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(Signed) S. P. Jewett, Acting Director."

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THE COURT: Gentlemen of the jury, the Court will excuse you now until 10:30 o'clock tomorrow morning. Meanwhile remember that the law forbids you to discuss this case with any one whatever. That is, you are not to talk about it with any stranger, nor are you to talk about it among yourselves. You must wait until you hear all the evidence on both sides and then if the Court submits it to you, you will retire and decide it, and not before that. Please return at half past ten tomorrow morning.

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New York, June 19, 1919.

Trial continued.

W I L L I A M H. B U R R O U G H S, of 237 West 34th Street,
and Lindenhurst, Long Island, called as a witness on be-
half of the defendant, having been duly sworn, testifies
as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q Mr. Burroughs, what is your business? A In the real
estate business.

Q Where is your place of business? A 237 West 34th Street,
New York City.

Q How long have you been located at that address? A I
have been in 34th Street about ten years, but in two addresses.

Q You know this defendant, Gibson? A Yes sir.

Q How long have you known him? A About ten years.

Q During that ten years have you seen him frequently?

A Yes sir.

Q How often have you seen him? A Several times every week.

Q Did you continue to see him up to the time of his arrest
on this charge? A Yes.

Q Regularly several times a week? A Yes.

Q Have you observed his conduct during the ten or twelve
years you have known him? A Yes sir.

Q Have you ever seen him in company with any person what-
soever during those ten or twelve years? A I know he keeps to

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himself pretty well, but he comes into my office. When he comes in there, of course, the other people are coming in at the time and he is with them.

Q Have you ever seen him outside of your office? A I have met him on the street, nearly always alone.

Q Have you ever heard anything against Mr. Gibson's reputation for decency or of conduct? A No sir.

Q Or for honesty? A No.

Q Or for sobriety? A I don't think you will find a more sober man.

Q Have you ever heard anything against him? A No; he does not drink anything or use tobacco.

Q How far away is your place of business from 513 8th Avenue? A Two or three short blocks.

Q Have you ever seen him in the company of any little girls? A No sir.

Q Or any women? A No sir.

Q During the ten or twelve years you have known him? A No.

MR. FABRICANT: That is all.

CROSS-EXAMINATION BY MR. BOHAN:

Q How often have you discussed his reputation with any person, with respect to his morals? A I never heard anything against the gentleman until this arrest.

Q Did you ever hear that about thirty-eight years ago he was arrested and charged with abduction? A No sir.

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MR. FABRICANT: I object to that question on the ground it is incompetent.

THE COURT: The District Attorney ought to know that the courts have repeatedly held, and verdicts have been reversed even in murder cases, where witnesses were interrogated about an arrest, that an arrest means nothing at all. You might be arrested to-day and discharged tomorrow.

MR. BOHAN: This is a character witness.

THE COURT: When a man is arrested and discharged, it means a mistake was made. As I said, convictions in murder cases have been reversed because district attorneys have referred to arrests. If there is any conviction you may call his attention to it, or any vicious or immoral act that you know of in his career.

Q Do you know where he lives? A Yes, he lives on 8th Avenue; I don't remember the exact number.

Q Did you ever visit his home? A I have been in his room two or three times.

Q Do you know whether he is married or not? A I don't think he was ever married. He told me he had not been.

Q Did you ever see any girls in his company, young girls?
A No sir.

Q Were you ever there in the daytime? A Yes, sir.

Q How often? A In his room, you mean?

Q In his furnished room, yes. A I suppose half a dozen

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times since I have known him.

Q You have never seen him in company with any person except during his business hours? A Business hours.

Q Did you ever meet him socially? A I have had social conversations or things of that kind, but I never was out to any social affair with him.

Q Where does he make his office, - in the same building with you? A No sir. I do not know that he has an office at all.

Q Do you know what his business is, or was? A I don't know that he has any business.

Q Your business is real estate? A Yes sir.

Q Did he ever visit you at your office? A A number of times. Several times a week, you might say. He talks over matters and asks me how real estate business is, and so on, and he passes the time.

MR. BOHAN: That is all.

JAMES W. KEENAN, of 200 Columbia Heights, Brooklyn, called as a witness on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q Mr. Keenan, what is your business? A Proprietor of a moving picture theater at 523 8th Avenue.

Q And where is that theater located? A 35th Street, north of 36th Street, on 8th Avenue.

Q Do you know where 513 8th Avenue is? A It is about 75

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feet south of 36th Street.

Q On which side of the street is your theater? A The west side.

Q And on which side is 513 8th Avenue? A West side.

Q Your theater is about 125 feet away from the residence of this defendant? A Approximately that.

Q How long have you known this defendant? A Between two and three years.

Q You go to your theater every day, do you? A Yes sir.

Q What part of the day do you spend there? A Usually from eleven or twelve to seven or eight o'clock.

Q How often have you seen this defendant in the last two or three years? A Well, I should say about eight or ten times a day.

Q Where did you see him? A He comes into the theater. He comes into the office, stops and talks to me when I am in the cash box, from three to 5.30.

Q Has that been a regular occurrence for the last two or three seasons, since you have been proprietor of that theater? A Yes.

Q How many times a day would you say you saw him at the theater? A I should say four or five times on the average every day.

Q Have you during the two or three years seen him at any time in the company of any little girls? A Never.

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Q You take in the cash in your theater? A From three to 5.30, while the cashier is off duty.

Q Have you at any time seen him in the company of any grown women during that time? A Never.

Q Have you at any time seen him in the company of any men during that time? A Never.

Q Have you heard anything against his reputation for decency of conduct? A I don't know anyone that knows him. I never talked with anyone that knows him.

Q Did you ever see him talk with anybody? A No sir; except to people in and around the theater as he came in and out.

Q Have you ever seen him talking to any little girls in your theater? A No.

Q Or to any little girls around your theater? A No.

Q Or to any little girls outside of the theater? A Never.

Q You have observed his conduct during that time, have you not? A Yes sir.

Q And you say you have not heard anything against his reputation for decency? A I did not talk with anyone that knows him, that I know of.

Q Have you ever seen him doing anything indecent to anyone? A No.

Q Or approach to any girls and talk to them? A No.

MR. FABRICANT: That is all; you may examine.

CROSS-EXAMINATION BY MR. BOHAN:

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Q You have seen Mr. Gibson eight or ten times a day, you say? A Four or five times a day.

Q Do you want to change that? A Well, some days eight to ten, and some days twice; but averaging four or five times a day.

Q Where would he be? A Passing the theater or come in.

Q Would he go to your theater every day? A Practically so.

Q Did he on any occasion ever go in, accompanied by a young girl? A No.

Q Did you ever see him give any young girl any money? --
A Never.

Q You don't know what my question is going to be. Just wait until I finish. Didn't he ever pay an entrance fee for any girl's into your moving picture theater? A No sir.

Q You were there constantly? A I am in the cash box from three to 5.30, and I am in the theater most of the day.

Q You never permit any girls to go to your theater under the age prohibited by law, except when accompanied by guardians?
A No sir.

Q You never have? A No sir.

Q Have you ever spoken to any persons about defendant's reputation for morality and decency? A I don't know anyone that knows Mr. Gibson.

Q You don't know anyone that knows him? A No sir.

Q Did you ever have any occasion to speak about Mr. Gib-

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son's reputation for honesty or morality? A No sir.

Q On any of the occasions that you would see him eight or ten times a day did you ever see him in company with anyone?

A Never.

Q Did he ever talk to you? A He talked to me by the hour.

MR. BOHAN: That is all.

JOHN JAMES GIBSON, the defendant, of 513 8th Avenue, called as a witness on his own behalf, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. FABRICANT:

Q How old are you? A A little over eighty.

MR. FABRICANT: There is no objection to amending the indictment as to the name of the defendant.

Q What is your correct name? A John James Gibson.

Q When were you born? A 1839, February 15th.

Q Where do you live? A 513 8th Avenue.

Q How long have you lived there? A A little over twelve years.

Q In this same room at 513 8th Avenue? A Yes sir.

Q Are there any persons who live on the same floor with you? A Yes sir.

Q How many persons? A There is two or three living on that floor, but they all belong in the same apartment.

Q You have there what is called a hall bedroom? A Yes-sir, a hall room.

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Q And you have occupied that for twelve years? A Yes.

Q Tell the jury what the contents of your room are?

A There is a sofa, bed lounge, a dressing case and washstand, some chairs; that is the furniture.

Q Do you know this little girl that testified here? A Yes.

Q How long have you known her? A Three or four years.

Q You have seen her around there three or four years?

A Yes sir, always playing around the street.

Q Have you ever spoken to her? A Yes; I seldom had, -- just like the little children playing around there, you might sometimes say something, but very rarely.

Q Did you ever speak to her? A Yes.

Q Are you engaged in any business now? A In the real estate business. I am retired like. I am not doing much.

Q How long is it since you have been able to perpetrate an act of sexual intercourse? A Over twelve years, I guess.

MR. BOHAN: Objected to as incompetent, irrelevant and immaterial.

THE COURT: I have taken the rape case from the jury; that is not the issue in the case.

MR. FABRICANT: No, but I think the tendency or the possibility of him doing it, I can question him about.

THE COURT: Well, he may have had the inclination to do it, without the ability. I will tell the jury about that when I charge them.

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Q How many times has this little girl, Helen Shanks, been to your room? A Once.

Q And that was on the 14th of May, 1919? A That was it; that is the date.

Q The date alleged in this indictment? A Yes sir.

Q Did you see her that day before she came to your room? A No sir.

Q Did you talk to her that day before she came to your room? A No sir.

Q How high up is your room? A One flight up.

Q It is on the first floor? A One flight up.

BY THE COURT:

Q And the window overlooked the street? A Yes.

Q It is a small bedroom? A Yes.

Q The girl correctly described the furniture, did she? A She described it.

Q Have you a couch there? A Yes.

Q A lamp? A Yes.

Q A table? A Well, a small table.

Q She said those things were in there? A Yes.

Q This is one room overlooking the street? A Yes.

Q And a door leading into the room from the hall? A Yes.

BY MR. FABRICANT:

Q About what time did she come to your room? A On that day it was about a quarter to five.

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Q Tell us what happened? A I was in my room when she walked in the door. My door was open. I left it open for air. She walked into the room and I said to her, when I saw her there, "What are you doing down here?" She said, "I have come to meet my father at five o'clock". I said, "When do you meet him?" She said five. I said where; she said Broadway and 6th Avenue. I looked at the clock; it lacked a quarter or a little less of five. I said, "You have not much time to wait; you have got quite a walk and you had better be going. He might be anxiously waiting for you". I did not want anyone in my room and I tried to keep them out all I could, and I tried to get rid of her as soon as I could. Then she started to go to the door, and there was a knock upon the door. She stepped back then and I stepped in front of her.. The room is small. I opened the door. It was ajar, it was not locked. This officer then stepped in the door and says to the girl, "What are you doing here?" She said "Nothing". He said, "Do you know this man?" She said yes. He said, "What is your name and where do you live?" She told him. He said, "Now, you know you were doing something here with this man". She said no, and he says, "You were, and if you don't say you were I will lock you up and send for your mother." The little girl commenced crying and she was frightened at his remarks and I said to the officer, "I would not threaten the little girl that way, that is not right; talk to her plain". He said, "You attend to your business; I know what I am doing. I will look out

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for my own self". I let him alone.

Q When the little girl came in did you bolt or lock the door of the room? A No sir.

Q When the officer came in were your trousers, or the fly of your trousers unbuttoned? A No sir.

Q And did you step around behind the officer and audibly says, "Ssh, Sh"? A I did not.

Q Gibson, about two months ago, - about two months before May or three months before May, you were arrested, weren't you? A Yes sir.

Q Who was the complaining witness in the case against you? A Little girls that lived around the corner there. They had lived around the corner from me.

Q And you were charged with tampering with those little girls? A Yes.

Q And you were discharged? A Yes sir.

Q You knew that at the time that this little girl came to your room? A Yes sir.

Q When this little girl came up to your room on the 14th of May did you ask her to lie on the bed? A I never did.

Q Did you take out your private parts? A I never did.

Q Did you know whether or not the police were watching you? A No sir.

Q But when this little girl came into your room did you have in mind the fact you had been arrested several months be-

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fore, or did you not have it in mind? A I knew it was wrong.

I would not have girls in my room. I don't permit them in there.

When they walk in on me I can't help it, you know.

Q Did you ever have anything to do with this little girl, Helen Shanks? A I never did.

Q Did you ever place your private parts in hers? A I never did.

Q Did you touch her private parts? A I never did.

Q What did you say to the police officer when he spoke to the young girl? A In that way, - he told me to mind my own business and then the girl was crying very loud. He tried to pacify her.

Q What did he say to her? A Talking in a lower tone, "Now, be quiet", and so forth - that he could fix it all right. And he says, "If you will say what I have told you to say and stick to it", - he emphasized that very plainly, to stick to it, - "I will not lock you up or send for your mother". He stood there and talked with her in an undertone, mumbling. Finally she quit her crying and he said, "Now you say what I have told you to say and stick to it and you will be all right and I will not lock you up". Then he turned to me and he said, "You are under arrest". The officer came in about two minutes after she was in there, or not longer than five minutes. She could not have been in there more than five minutes before the officer came in.

MR. FABRICANT: That is all.

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CROSS-EXAMINATION BY MR. BOHAN:

Q Mr. Gibson, were you ever married? A No sir.

Q How long have you lived at 513 8th Avenue? A A little over twelve years.

Q Had you lived there alone? A Yes.

Q Did you eat out in restaurants? A Yes sir.

Q Do your friends come to call on you and visit you there?
A Yes sir.

Q Do any women folks visit you? A No, I do not allow that. Women folks do come there to see me sometimes on a business transaction, something about real estate or something else. Then I get rid of them, for I don't want such things about the room. I do not care for them.

Q Do you use your furnished room or your home to carry on your business there also? A Well, there is a great deal of it carried on there, yes sir.

Q Have you any business cards? A No sir.

Q You say these girls used to come in there and you would tell them to get out, is that right? A No; I would not encourage them to come in.

Q But when they did come in? A Well, get them out as soon as I could.

Q How often did they come in? A A girl would not come in there once in two years.

Q Could you say that prior to the 14th of May there were no

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girls under twenty-one years of age ever in your room? A They might have been in there, as I told you. They are liable to come in there to see me about business, but for no improper business.

Q I am not asking you whether they came in for proper or improper purposes, but I am asking you whether any girl under twenty-one was ever in there prior to the 14th day of May? A I would say there had been someone.

Q When? A I don't know.

Q How often? A I don't remember. There has not been a girl in there for three or four months that I know of.

Q Who is she? A I don't know the name of anyone girl that ever came in there.

Q Who is the last girl you remember? A I don't remember.

Q You don't remember any girl that was in there before the 14th day of May when you were arrested? A Oh yes, there is girls lives around the corner that might stop in any time.

Q How old are those girls? A They are over twenty, I guess.

Q Not under twenty? A Not that I know of.

Q Can you give us the name of any girl under twenty that was ever in the habit of visiting your room? A No, I do not know any girl's name that visited my room that is under twenty.

Q How long did you know Helen Shanks? A About two or three years. She has been born in that neighborhood and lived around there pretty much all her life.

Q What neighborhood? A Between 46th Street and the post office.

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Q That is not your neighborhood? A That is where the children play around there.

Q Your neighborhood is 36th Street? A That is where I live.

Q Were you familiar with the neighborhood where this girl lived in 46th Street? A Yes sir. I have been living so long in that neighborhood I am acquainted with everybody around there.

Q What do you call your neighborhood; you live in 36th Street? A Yes sir.

Q Do you want the jury to understand that 46th Street and 8th Avenue is also your neighborhood? A It is a neighborhood that I am very well acquainted in. I spend much of my time there.

Q What were you doing up around 46th Street? A Just looking curiously.

Q Would you be up there frequently? A Yes.

Q How often? A I don't know; as it would suit me. I might have to go to different newspaper offices and such as that; that would take me in that neighborhood.

Q What newspaper office is around 46th Street? A There is The Times.

Q Where, on 46th Street and 8th Avenue? A No, that is on 42nd Street.

Q What would take you in the direction of 46th Street and 8th Avenue? A No papers there.

Q Were you up around the public school in 48th Street and 47th Street between 8th and 9th Avenue? A I would not go up

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there in once in two or three years.

Q What would you be looking for there? A Well, I have been over in the five and ten cent store for things I could not get at the down town five and ten cent store.

Q Where is there a five and ten cent store there? A 47th Street, I guess.

Q 46th and 47th Street? A Yes sir, along in there some place.

Q Is that where you met Helen Shanks? A No.

Q Don't you know she lives there? A She lives in 44th St.

Q What house? A I know the house, but not the number.

Q Were you ever in the house? A No sir.

Q Did you ever meet her mother? A No sir. Yes, I have met her outside of the house.

Q Where did you meet her mother? A She came up at one time in my hall. I do not know what she was talking about, something worrying her, and she did not go into details, and she did not stop very long. She was standing in front of my door in the hallway.

Q How long ago was that? A That was a month or more ago.

Q Did she have Helen with her? A Yes sir.

Q Did she say anything to you? A Yes, but I don't remember the conversation.

Q Don't you remember one word she said? A She said that something --

Q What did she say? A I don't remember any specific con-

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versation.

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MR. FABRICANT: Objected to as incompetent, irrelevant and immaterial, and not within the issues.

Objection overruled. Exception.

A I don't remember the conversation.

Q Don't you remember anything she said? A No, not that day.

Q You never met her before? A No sir.

Q Did she introduce herself? A I don't remember.

Q How do you know she was the mother of Helen Shanks? A She said, "I am Helen Shanks' mother", I think she said.

Q You remember that? A I would not be positive.

Q What else did she say? A I don't remember anything else she said.

Q Do you remember her asking you whether you had Helen in your room? A No sir, she never did say that.

Q Do you remember her requesting you not to take her daughter to your room and giving her money and fruit? A No sir, she never said that to me. —

Q Don't you remember that was last December? A I don't remember when it was.

Q Would you say it was only a month before you got arrested?
A I don't remember when it was.

Q You say it was more than a month? A Since I was arrested, yes.

Q Did you ever meet Helen Shanks after? A No sir.

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Q Do you remember the names of any of the girls from the neighborhood in which you live? A No, I don't remember the name of one.

Q Can you give us the name of any girl under sixteen or eighteen that you ever permitted to go into your room? A No sir, she was never up in my room with any girl.

Q Did you ever know a girl named Edna Schneider? A Yes, I know Edna Schneider.

(At this point Edna Schneider steps into the courtroom.)

A That is the girl I was arrested on her complaint for, and complaint dismissed. But she never was up in my room with Helen Shanks.

Q When was that? A The arrest was some time ago and the case was dismissed. She is the little girl that run away from home for ten days before they could find her. She never was up at my room with Helen Shanks.

Q I did not ask you whether she was there with Helen Shanks. I asked you whether you knew her and you said yes.

THE COURT: He was tried and acquitted on that charge; what is the use of discussing it any further; the jury must not get any impression from that. If he was convicted of any offense you may ask him.

Q Were you ever convicted of a crime? A The conviction was set aside; no.

Q Did you ever commit an act of intercourse in your room with.

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any girl under eighteen? A Oh no.

Q Or attempt to have an act of intercourse with the girl I have just brought into the room, Edna Schneider? A No sir.

Q Did you ever know a girl named Vera Vernon? A I don't know, but that might be the girl that she runs with as a pal.

Q A friend of Edna Schneider? A Yes sir.

Q Was she ever in your room? A Yes.

Q Both of them? A They were both in my room to borrow money to keep from starving.

Q How long were they in your room? A I suppose about fifteen or twenty minutes.

Q You said a moment ago they were in there and you gave them money to keep them from starving? A Yes; I gave them twenty-five cents apiece. They went to a restaurant to get something to eat. They had nothing to eat that night.

Q Did they tell you they had run away from home? A No, I did not know it at that time.

Q Did you learn it afterwards? A Yes sir.

Q Did you help them to get a room and lodging? A No sir, I never seen them after that.

Q Do you know where they slept at night while they were away from home? A No sir.

MR. FABRICANT: I object to any further cross-examination on this line. It does not call for any vicious or immoral acts on the part of this defendant at all.

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THE COURT: As I said before, if he was arrested on that charge and the charge was dismissed, that is conclusive on that point, that he was not guilty of any impropriety, and the People are bound by his answers. The jury will take it that he is entirely innocent of the matters contained in the questions that the District Attorney has put to him on that point. That is the law. I have indicated that to the District Attorney but he does not pay attention to my ruling, and if he persists in it I will take this case from the jury's consideration, if that motion is made. The defendant is entitled to a fair trial, to a trial according to law. I have made my rulings, and be they right or wrong, they are binding.

MR. BOHAN: The District Attorney has no desire to press any questions that are in violation of your Honor's instructions, or of the law. He desires only to put such questions that in his judgment are perfectly fair on the information that he possesses.

THE COURT: Then when the Court rules on them you have done your duty. I have done my duty when I remove any impression which might be caused in the minds of the jurors.

Q You are sure the officer said to Helen Shanks, in your presence that, "If you don't say what I tell you and stick to it I will tell your mother"? A "And lock you up".

Q And lock you up"? A Yes sir.

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MR. BOHAN: That is all.

BY THE COURT:

Q How long have you known that officer? A I have not known him. He was around the precinct but I do not know that I ever saw him.

Q You never had any trouble with him at all? A No sir, never.

MR. FABRICANT: That is all. The defendant rests.

For the purposes of the record I renew my motion to dismiss the charge of assault in the second degree.

THE COURT: Motion denied.

MR. FABRICANT: Exception, please, on the same grounds previously stated, and I take an exception.

F R A N K P. S C H N E I D E R, of 109 East 29th Street, called as a witness on behalf of the People, in rebuttal, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BOHAN:

Q What is your business, Mr. Schneider? A Painter.

Q Are you in business for yourself? A Yes sir.

Q Where is your place of business? A The same place, 109 East 29th Street.

Q Do you know the defendant, John J. Gibson? A I do.

Q How long have you known him? A Since the latter part of November, 1918.

Q Do you know other people that know him? A Yes sir.

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Q Do you know what his reputation is for morality? A Not very well; not very good.

Q Just answer the question; do you know what the defendant's reputation is for good morals, yes or no? A Yes.

Q What is it, good or bad? A Bad.

MR. BOHAN: Your witness.

CROSS-EXAMINATION BY MR. FABRICANT:

Q Mr. Schneider, how long do you know this defendant?

A Since November, the latter part of November, 1918.

Q When did you start discussing this defendant's reputation with anyone? A At that time.

Q About that time? A Yes sir.

Q Wasn't it at the time he was arrested, charged with having something to do with these two little girls that have been mentioned in this case? A I don't know about the two girls, but about one girl at the time.

Q Edna Schneider? A Yes.

Q Was it at that time you commenced to hear something about him? A Yes sir.

Q That was the time his reputation commenced to be against him, is that correct? A Yes sir.

Q And you heard some imputations about his character, isn't that so? A Yes.

Q That is all you know about him? A That is all.

Q That is all you ever heard about him? A Yes.

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Q Did you know that that case had been dismissed and that he had been discharged on it? A I heard that afterwards.

Q Didn't you hear the people say that the old man must be a good fellow or a bad fellow after that? A I heard nothing after that.

Q Did you hear anything against him after that? A I did.

Q You continued to hear something against him after that?

A That is, as to his character.

Q And even after his discharge? A Yes sir.

Q With whom did you discuss his character? A The young girl that knows him well and has been up in his room also.

Q You have discussed his character with her? A Yes.

Q What is her name? A Vera Vernon.

Q Is she a friend of the Schneider girl? A She is, yes; that is, she had been. She is not now.

Q She had been a friend of the Schneider girl? A Yes.

Q And it was from her you got some information? A Yes sir.

Q Have you ever discussed it with any other person? A No.

Q What is your name? A Frank P. Schneider.

Q You are the father of the little Schneider girl? A I am.

Q Aren't you anxious to see this old man punished? A Not necessarily, no. I want to see him have a square deal.

Q You think he corrupted your daughter, do you not? A I do.

Q You never discussed his reputation with any other person than your daughter, have you? A Yes, with Vera Vernon.

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Q That is the little girl that was a friend of your daughter's? A Yes.

Q Were you in court at the time this defendant was discharged? A No sir.

Q You learned of his discharge? A I was sick in bed at the time he was discharged.

Q But you learned about it the same day? A Yes.

MR. FABRICANT: That is all, the defendant rests.

MR. BOHAN: The People rest.

Mr. Fabricant sums up to the jury.

MR. BOHAN (summing up to the jury): * * * * * You know, and physicians know, that moral perverts do not commit intercourse in its regular and natural form; they do it in other ways.

MR. FABRICANT: I object to that. That is not within the scope of this evidence.

THE COURT: Mr. Fabricant, there were many statements which you made which might have been objected to, to which I will refer in my charge. I think this remark is entirely proper. It is for the jury to determine whether it is a proper inference from the evidence or not. If they believe it was warranted from the evidence as it relates to this defendant, they will give it consideration, and if it is not supported by evidence they will disregard it, and that rule applies to the statements made by counsel for the defense, of a personal nature and not supported by the evidence.

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THE COURT'S CHARGE TO THE JURY

THE COURT (Mulqueen, J): The indictment charges the defendant with several crimes which to a certain extent involve more or less the same elements.

The first count of the indictment charges the defendant with the crime of rape in the second degree. It says that on the 14th of May of this year he performed an act of sexual intercourse on Helen Shanks who was a female under the age of sixteen years, and was not his wife, under circumstances not amounting to rape in the first degree. That is a very plain charge.

It is conceded by the defense, as I understand, that Helen Shanks is a female under sixteen years of age, or under eighteen, at all events, and that she was not the wife of the defendant. So that if he performed an act of sexual intercourse with her, under our law it would be the crime of rape in the second degree, whether she consented or not. There is no dispute about the law.

It is said on behalf of the defendant that he is over eighty years of age and that therefore there is a presumption that he could not perform an act of sexual intercourse. There is no such presumption. There is a presumption that every boy reaching the age of puberty can perform sexual intercourse and the burden is on anyone to prove disability

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when charged with the crime.

There has been some evidence here of physical disability, and therefore the Court said during the trial that it would take away the charge that the defendant had actually had sexual intercourse with this girl, but would submit to you the charge which is embraced in this first count, that he tried to have sexual intercourse with her.

If this defendant put this girl on a lounge, made her open her legs, exhibited his private parts and tried to have sexual intercourse with the girl, he was guilty of a crime, the crime of an attempt to commit rape in the second degree. Or, if he did not try to insert his private parts into her, if he put his hands on any part of her body, or inserted a finger into her private parts, in an attempt to have intercourse with her, he would be guilty of assault in the second degree, because rape in the second degree is a felony and any person who assaults another while attempting to commit a crime involving the person of that other is guilty of assault in the second degree. So that if this defendant lay on this girl and inserted any part of his body into her private parts, or placed his own private parts in proximity to hers, in order to have intercourse with her, placed his hands on her with intent to commit a felony, he was guilty of assault in the second degree. If he did not intend to commit a felony, but if he made this girl expose her

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person and placed his hand on her to gratify his lust, he would be guilty of assault in the third degree, or of the crime of impairing the morals of a minor child. Such conduct as has been described here is a crime. The law seeks to protect young females, as well as boys from the corrupting influences of those who are debased and degenerate, of those who have no moral sense, or who have no control of themselves and who are a menace to society. It is absolutely essential to the perpetuity of this state and of American institutions that the young people should be chaste, and anyone who interferes with them is guilty of a very great crime under our law, which may be either rape, assault in the second or third degree, or impairing morals.

The indictment charges several serious crimes that must be seriously considered by you. The law is plain and therefore the charges are plain.

Under our law when a man is charged with a crime he is not required to prove his innocence. The People have the burden of proving that he is guilty, and the evidence must satisfy the jury beyond a reasonable doubt that the charge is true, otherwise he must go free.

A reasonable doubt is a doubt that is founded on reason. It is not a doubt that is based on prejudice or sympathy, or a desire to avoid doing your duty if it is disagreeable. You must remember that the work you are called

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upon to do is the most important work that a citizen in a republic renders in time of peace. In time of war you know, our best blood had to be shed and countless sacrifices we can never describe suffered in order to maintain the integrity and independence of this country. And in time of peace, if crime goes unpunished, especially crimes of the kind charged here, the nation will be destroyed. So when you are called upon to sit as jurors in a case involving those crimes you must do your duty, which is to be absolutely cool and neutral; you are not retained by one side or the other, but you are to weigh the evidence calmly and impartially, and resist every appeal to your prejudice, your sympathy or your passion to do otherwise. You have sworn to render an honest verdict on the evidence.

Now what is the evidence? The People have called this girl here and they have called her mother. You have heard the girl recite her story to you. The doctor says that she is no longer a virgin; somebody has destroyed her virginity. That is not disputed. She has lost the most precious possession that a woman can have, - chastity. The police officer has been called. He is paid by the People of the State of New York to patrol his post and to protect all the people, young and old, from the criminal interference or molestation on the part of anyone. You saw him on the witness stand. You must say how he impressed you, whether as a bright,

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reliable, credible witness or not. He said that he saw this defendant following this girl on the street, that his manner attracted his attention to him and that he watched him. That then he saw the defendant after he had gone a certain distance, cross the street and enter a building. He said he had never seen the man before. He is corroborated in that by the defendant, who said this officer never saw him to his knowledge, and he never saw the officer and never had any trouble with him. The officer was there doing his duty, and he saw this defendant appear in a window of the building into which he entered, on the first floor, and beckon to this girl who was standing across the street; that then she crossed the street and went into that building and he followed; that he found the door of ^{defendant's} room locked. I do not know whether that is denied or not. The girl said it was locked. The officer states he knocked on the door. He heard certain sounds inside. And then he says he found certain conditions after entering the room. The defendant admits that the girl was in his room. He says that she came there to tell him that she had an appointment with her father to meet him several blocks away, at five o'clock. Why she came to tell him about her father is not explained.

Now it is for you to say which witness you will believe. ^(defendant) Did ~~the~~ induce that girl to come there, and when she came there did he do the things that she says he did. Or did the

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girl come there of her own accord, a girl who according to his statement had never been there before, as I recall the testimony, and tell him that she was going to meet her own father at Broadway and 36th Street. And all this happened on 8th Avenue between 35th and 36th Streets. There is the evidence, gentlemen, and you must be absolutely cool and calm in your deliberations. I have recited this evidence not for the purpose of controlling or influencing your judgment, but in view of some of the arguments that have been advanced to you.

Mr. Fabricant tells you in his summation that he had no interest in this case. Well, it is his duty as an attorney to get his client free, if he can, by his argument. He has that interest. And furthermore, it is not true that he is not paid for what he is doing. He is paid for what he is doing. He is here at his own request. He is paid by a society that defends people who have no means of paying. So he is paid. If he did not want the retainer he did not have to accept it. I make this statement because it is unfair for the attorney to tell you he is not paid, but is assigned by the Court and doing his duty simply as an attorney, and for that reason his words are entitled to greater weight; - they are not. All those remarks of a personal nature have no place in a criminal trial and should be disregarded by you. The attorneys on either side are paid for

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their services; the District Attorney is paid for his services and he would not be here if he were not paid, naturally. They must earn a living; there is no reflection on them, because they are paid. But his words are not entitled to greater weight because he is a public official. What I want to drive home to your minds and to make you clearly understand is that the attorneys on both sides have their duties to the clients.

The People of the State of New York, which is organized society, and who wish to have decency, law and order maintained in the community, make this charge against the defendant. The legislature specifically provides how the People's lawyer is hired to represent their interests, and they hire him for four years by electing him once every four years. Then the District Attorney when he assumes office appoints his assistants. Judge Swann is the present District Attorney, and he selected Mr. Bohan, and Mr. Bohan has ably and diligently done his duty. Mr. Fabricant represents a society here which has been organized by charitable men to protect the interests of persons charged with crime and who have not the means to employ counsel. So he is here in the discharge of his duty and is paid for it. That does not minimize his merits in any way, but you must not be swayed by the statements of counsel that he is merely here in the interests of justice, that he has no personal interest,

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that he was assigned by the Court and is not paid by the defendant for what he does. You must disregard any remark of counsel or of anyone else which is of a personal nature and not based on the evidence. Your duty is to calmly and coolly weigh this evidence and decide which of the witnesses you are going to believe. There is only one way of testing the credibility of witnesses, and that test applies equally to all the witnesses on both sides. You may notice the manner of the witness while testifying, the interest of such witness in the controversy and the motive of the witness. You may inquire as to what motive, if any, this girl has in making this statement. The defendant says on that point that when the officer got into the defendant's room after the door was unlocked, he threatened to arrest her if she did not make certain statements and stick to them. Do you believe that? Do you believe that the girl went there and told the defendant she was going to meet her father at Broadway and 36th Street at five o'clock. If you believe that, acquit him. I said the same test applies to all the witnesses. Is the defendant caught in the commission of a heinous offense, struggling to retain his freedom and therefore with the strongest possible motive to lie and to deceive you, or is he an innocent man improperly charged with this crime? You must apply those tests to all the witnesses.

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This is a case of very great importance to both sides and you must not be led into taking an improper view of it. It is not incumbent on the People to prove that he was physically capable of committing sexual intercourse in order to find that he tried to do it, that he had the desire to do it, and that he brought this girl there to be a victim of his lust. You must calmly, coolly and neutrally decide from the evidence whether that girl was in that room. You must not have any prejudice against him. You must decide whether there is any merit in Mr. Fabricant's statement that because he was acquitted a week or two ago of a similar charge that that would prevent him from repeating the offense. It is for you to say whether it would not, on the contrary, encourage him to violate the law. The remarks of counsel that are based on the evidence and that are proper deductions from the evidence in your opinion should receive credence and respectful consideration at your hands. On the other hand, all remarks of a personal nature and all statements that are not supported by the evidence must be disregarded by you. The law is that you alone are the sole and exclusive judges of all the facts and the credibility of witnesses. The law simply makes the Court the judge of the law and every legal right of this defendant has been scrupulously regarded by the Court. You heard me prohibit the District Attorney from making inquiries along certain lines

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on the objection of defendant's counsel. It was my duty to do that. Every right of the defendant has been protected.

The facts you take from the witnesses, not from the Court or from counsel. My only desire is to see an honest verdict rendered. I do not care whether you convict him or acquit him, but I want you to arrive at a verdict in the proper way. Weigh the evidence and do your duty without any considerations of sympathy or prejudice. If the evidence does not convince you of his guilt beyond a reasonable doubt, you should acquit him, but if it convinces you of his guilt beyond a reasonable doubt it is your duty to find him guilty of an attempt to commit the crime of rape in the second degree or of assault in the second degree or of assault in the third degree, or of the charge of impairing the morals of a minor female child. Now, render an honest verdict. That is all that the Court asks, and then you will be doing your duty. Are there any requests to charge?

MR. FABRICANT: Will you Honor take up the question of abduction?

THE COURT: I will take that away from the jury.

MR. FABRICANT: I ask your Honor to charge that under the second count, charging assault, in view of the way in which it is framed, that the jury cannot convict the defendant of an act of intercourse, if they find there was any.

THE COURT: They cannot find him guilty of assault in

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the second degree unless he placed violent hands on this girl or unlawful hands on her. He had no right to touch her person at all. He had no right to have her in his room for any improper purpose. Whether the defendant made her take off her bloomers or if she did it willingly, is immaterial, if you believe that testimony. A child under eighteen years of age cannot consent to the criminal act. Any man that touches that girl does so at his peril, because the law is made to protect her. If she lay on that couch and the defendant told her to open her legs, lay on her, exposing his person, using his finger or any other part of his body, touching her, he was guilty of assault in the second degree, or of assault in the third degree, or of impairing her morals. You either believe that story or you do not believe it. There is sufficient legal basis for the charge of assault in the second degree but your point, Mr. Fabricant, is that because the girl consented it could not be assault in the second degree. If it were an older person, that would be true, but where a child is incapable of consenting, where the law protects her and takes away her power of consent, a man who violates that law is guilty of a felony, assault in the second degree, if he attempts to have intercourse with her.

MR. FABRICANT: I am not raising that point now. The second count charges that the felony which he committed was

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the specific act of intercourse.

THE COURT: He may have tried that.

MR. FABRICANT: But he must have had that intention in the beginning.

THE COURT: Yes, he must have had that intention; if not, he would be guilty of assault in the third degree. If he had no intent to have intercourse with this girl, if he made no effort to have sexual intercourse with her he could only be guilty of assault in the third degree. I have charged that. In fact, to simplify the matter I am willing to put it to the jury as an assault case, that he either intended to have intercourse and assaulted her with that intent, which would be assault in the second degree, or he had a lustful and vicious mind and to gratify that he placed his hands on her, in which event he would be guilty of assault in the third degree. Or, if he was simply innocently talking with her, if she came to his room to tell him about an engagement with her father and he merely told her to hurry along and he was interrupted by the police officer when he was talking to her, why, they will acquit him.

MR. FABRICANT: Exception to your Honor's charge of assault in the third degree, on the ground that the girl having consented, it could not be assault in the third degree.

THE COURT: Yes, you have an exception. Now, what I said to you about your relation to your client is not in any way

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personal. You have done your duty ably, but you go further than your duty, in my opinion, when you tell the jury also that you are the lawyer for poor men here or that you have no interest in them and you get no money. That is not so. I will concede that you do not get enough money; you ought to get more. But you are paid here and you are here because you are paid; Is that not so?

MR. FABRICANT: Yes.

THE COURT: And you could not afford to be here if you were not paid?

MR. FABRICANT: Yes.

THE COURT: So that the jury must disregard all those matters of a personal nature. Mr. Fabricant is not on trial. I would be a witness for his good character if he were on trial. But what I want is to have the case fairly decided on the evidence and not to have the jury influenced by any feeling towards one lawyer or the other, or any resentment one way or the other. Just take the evidence and weigh it carefully. You heard the witnesses. It is your function to say whom you will believe. I know you are honest men, but you will decide that honestly and then render an honest verdict, that is all. Every criminal case is very important; it is important to the People and important to the defendant.

MR. FABRICANT: May I have the privilege of having put on the record the fact that I did not say to the jury that

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I was not paid by this defendant. I said to the jury that I was assigned by the Court.

THE COURT: It is immaterial how the lawyer gets his client. If the client pays him, well and good, but once he assumes that obligation it is his duty to resist every step of the prosecution and to secure his client's acquittal by every proper means. I merely state that I do not think that injecting the personality of an attorney before the jury is proper. Mr. Fabricant's personality or his interest does not appear here at all. He is simply doing his duty as an attorney, and when he exceeds his duty and introduces an element in the case that I think does not properly belong there, I think it is my duty to eliminate that. So that you must do what you have sworn to do, namely, decide this case on the law as the Court gives it to you and on the facts as you find them, and on no other element of any kind. When you do that I am sure I will not quarrel with your verdict, whatever it is. I have done my duty. It is for you to say what you will do. I am perfectly satisfied that you will render an honest verdict, but I want to eliminate any improper consideration from the jury. Mr. Bohan may as well say, "If you do not convict this man I will feel bad". Of course the jury would disregard that statement entirely. You are not here to acquit anyone or to convict anyone. As honest men you heard the evidence; as honest men render your opinion.

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Take the law from the Court and not from anyone else. The law is perfectly plain. Did he or did he not bring that girl there as the policeman said, and as she said? Did he place his hand on her with a wicked purpose? If he did, he is guilty of the crime of assault in the second or third degree. If she came there of her own volition and said simply she wanted to meet her father, he is not guilty of any crime.

MR. FABRICANT: And the arguments based upon the evidence in the case are entitled to respectful consideration.

THE COURT: Yes; I told them that. It is ~~is~~ remarks of a personal nature that have no bearing in the case. You may retire, gentlemen.

The jury retire to deliberate at 12.50 P.M., return at 2.15 P.M. and render a verdict finding the defendant guilty of assault in the third degree.

MR. FABRICANT: I move for a new trial upon the ground the verdict is against the evidence, against the law, and upon the exceptions taken to the charge concerning the crime of assault in any of its degrees.

Motion denied and exception taken.

Defendant remanded one week for sentence.

I hereby certify that the foregoing is a true and correct transcript of the minutes taken in this proceeding

*Ludwig Rutz
Official Stenographer*

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